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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

FLOR MARIA SOTO,

Petitioner,

vs.

CARLOS FLORES, ISMAEL BETANCOURT y LEBRON, and JOHN DOES X, Y, and Z,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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167 pp

QUESTIONS PRESENTED

1. Whether the framework articulated in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), permitting the use of circumstantial evidence to demonstrate intent to discriminate is the appropriate standard for assessing an equal protection claim asserted by a victim of domestic violence?

2. Whether the state-created danger theory of liability under 42 U.S.C. § 1983 was sufficiently established in 1991 so as to overcome a defense of qualified immunity and permit an examination of official liability for injuries caused by a third party where the official's actions enhanced the existing danger?

3. Whether a state's interference with a parent's constitutionally protected liberty interest in the companionship, custody, and raising of her children constitutes a substantive due process violation cognizable under 42 U.S.C. § 1983?

4. Whether the violation of the mandatory complaint, reporting, and arrest provisions of Puerto Rico's Domestic Abuse Prevention and Intervention Act gives rise to a Fourteenth Amendment procedural due process claim under 42 U.S.C. § 1983?

PARTIES BELOW

The parties before this Court are those set forth in the caption. Since this action was initiated, one of the respondents, Luis Carrasquillo, has been dismissed from the case.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

PARTIES BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

A. Factual Background 2

B. Procedural History 7

REASONS FOR GRANTING THE WRIT 8

I. THIS CASE PRESENTS IMPORTANT ISSUES CONCERNING THE APPROPRIATE STANDARD FOR ASSESSING INTENTIONAL DISCRIMINATION IN DOMESTIC VIOLENCE EQUAL PROTECTION CASES 8

A. The Court Of Appeals Erred By Failing To Assess Petitioner's Equal Protection Claim Under The *Arlington Heights* Framework 9

B. The Court of Appeals Erred By Failing To Determine Whether Police Custom And Practice Contains A Gender-Based Classification 14

II. THE FIRST CIRCUIT ERRONEOUSLY GRANTED RESPONDENTS QUALIFIED IMMUNITY DESPITE THEIR CLEAR LIABILITY UNDER THE STATE-CREATED DANGER DOCTRINE 16

III. THE FIRST CIRCUIT'S DECISION DISMISSING PETITIONER'S WRONGFUL DEATH CLAIM ALLEGING A VIOLATION OF HER DUE PROCESS RIGHT TO RAISE HER CHILDREN CONFLICTS WITH THE RULINGS OF THE MAJORITY OF THE CIRCUITS 22

IV. THE FIRST CIRCUIT ERRONEOUSLY FAILED TO ADDRESS PETITIONER'S DEPRIVATION OF HER LIBERTY AND PROPERTY ENTITLEMENTS, AS ESTABLISHED BY LAW 54, WITHOUT DUE PROCESS OF LAW 27

TABLE OF AUTHORITIES

Cases **Page**

Anderson v. Creighton, 483 U.S. 635 (1987) 17

Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977) . . . . . passim

Ashcroft v. Mattis, 431 U.S. 171 (1977) 23

Bagley v. Rogerson, 5 F.3d 325 (8th Cir. 1993) . . . 28, 29

Balistreri v. Pacifica Police Dep't, 855 F.2d 1421 (9th Cir. 1988) 10

Bell v. City of Milwaukee, 746 F.2d 1205 (7th Cir. 1984) 22, 26, 27

Board of Regents v. Roth, 408 U.S. 564 (1972) . 27, 28, 30

Borucki v. Ryan, 827 F.2d 836 (1st Cir. 1987) 19

Bowers v. DeVito, 686 F.2d 616 (7th Cir. 1982), *cert. denied*, 470 U.S. 1052 (1985) 16, 18

Bryson v. City of Edmond, 905 F.2d 1386 (10th Cir. 1990) 24

Cannon v. Taylor, 782 F.2d 947 (11th Cir. 1986) 19

Carmona Pacheco v. Betancourt y Lebron, 820 F. Supp. 45 (D.P.R. 1993) 23

Collins v. Marina-Martinez, 894 F.2d 474 (1st Cir. 1990) 28

Columbus Board of Education v. Penick, 443 U.S. 449 (1979) 11

Conley v. Gibson, 355 U.S. 41 (1957) 29

Cornelius v. Town of Highland Lake, 880 F.2d 348 (11th Cir. 1989), *cert. denied*, 494 U.S. 1066 (1990) 18, 19, 20

Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556 (1st Cir.), *cert. denied*, 488 U.S. 823 (1988) 23

Crumpton v. Gates, 947 F.2d 1418 (9th Cir. 1991) 23

Danese v. Asman, 875 F.2d 1239 (6th Cir. 1989), *cert. denied*, 494 U.S. 1027 (1990) 23

Davis v. Scherer, 468 U.S. 183 (1984) 17

DeShaney v. Winnebago County Dep't of Social Serv., 489 U.S. 189 (1989) . . . . . passim

Diaz Camacho v. Lopez Rivera, 699 F. Supp. 1020 (D.P.R. 1988) 28

DiJoseph v. City of Philadelphia, 953 F. Supp. 602 (E.D. Pa. 1997) 18

Doe v. Calumet City, 161 Ill.2d 374, 641 N.E.2d 498 (1994) 0

Estate of Bailey v. County of York, 768 F.2d 503 (3d Cir. 1985) 22

Estate of Gilmore v. Buckley, 787 F.2d 714 (1st Cir.), *cert. denied*, 479 U.S. 882 (1986) 20

Freeman v. Ferguson, 911 F.2d 52 (8th Cir. 1990) . 17, 18

Germany v. Vance, 868 F.2d 9 (1st Cir. 1989) 21

Glidden v. Atkinson, 750 F. Supp. 25 (D. Me. 1990) . . . 28

Greene v. City of New York, 675 F. Supp. 110 (S.D.N.Y. 1987) 23

Griswold v. Connecticut, 381 U.S. 479 (1965) 26

Hall v. Ochs, 817 F.2d 920 (1st Cir. 1989) 21, 22

Harlow v. Fitzerald, 457 U.S. 800 (1982) 22

Hewitt v. Helms, 459 U.S. 460 (1972) 27

Hynson v. City of Chester, 864 F.2d 1026 (3rd Cir. 1988) 10

Jackson v. City of Joliet, 715 F.2d 1200 (7th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984) 18

Jefferson v. City of Tarrant, __ U.S. __, 117 S.Ct. 1333 (1997) 24

Kellas v. Lane, 923 F.2d 492 (7th Cir. 1990) 29

Kelson v. City of Springfield, 767 F.2d 651 (9th Cir. 1985) 22, 27

Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454 (1989) 28

Kneipp v. Tedder, 95 F.3d 1199 (3rd Cir. 1996) . . . 18, 19

Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163 (1993) 29

Lefall v. Dallas Indep. Sch. Dist., 28 F.3d 521 (5th Cir. 1994) 21

Lucero ex rel. Chavez v. City of Albuquerque, 140 F.R.D. 455 (D.N.M. 1992) 24

Manarite v. City of Springfield, 957 F.2d 953 (1st Cir.), *cert. denied*, 506 U.S. 837 (1992) 23

Martinez v. Colon, 54 F.3d 980 (1st Cir.), *cert. denied*, __ U.S. __, 116 S.Ct. 515 (1995) 18

Mattis v. Schnarr, 502 F.2d 588 (8th Cir. 1974) 22

May v. Anderson, 345 U.S. 528 (1953) 26

McKee v. City of Rockwell, 877 F.2d 409 (5th Cir. 1989), *cert. denied*, 493 U.S. 1023 (1990) 10

Meyer v. Nebraska, 262 U.S. 390 (1923) 25, 26

Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (1982) 26

M.L.B. v. S.L.J., __ U.S. __, 117 S.Ct. 555 (1996) . . . 26

Monahan v. Dorchester Counseling Ctr., Inc., 961 F.2d 987 (1st Cir. 1992) 20, 21

Nashiyama v. Dickson County, 814 F.2d 277 (6th Cir. 1987) 18

Owen v. City of Independence, 445 U.S. 622 (1980) . . . 25

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979) 11, 14

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 25

Prince v. Massachusetts, 321 U.S. 158 (1944) 25

Reno v. Bossier Parish School Board, __ U.S. __, 1997 WL 235097 (1997) 9, 11, 12

Rhyne v. Henderson County, 973 F.2d 386 (5th Cir. 1992) 22, 23

Ricketts v. City of Columbia, 36 F.3d 775 (8th Cir. 1994), *cert. denied*, __ U.S. __, 115 S.Ct. 1838 (1995) 10

Robbins v. Maine School Admin. Dist. No. 56, 807 F. Supp. 11 (D. Me. 1992) 21

Robertson v. Wegmann, 436 U.S. 584 (1978) 25

Santosky v. Kramer, 455 U.S. 745 (1982) 27

Shaw v. Stroud, 13 F.3d 791 (4th Cir.), *cert. denied*, 513 U.S. 813 (1994) 23

Sherrod v. Berry, 827 F.2d 195 (7th Cir. 1987), *rev'd in part on other grounds*, 856 F.2d 802 (7th Cir. 1988) 24

Skinner v. Oklahoma, 316 U.S. 535 (1942) 26

Smith v. City of Fontana, 818 F.2d 1411 (9th Cir.), *cert. denied*, 484 U.S. 935 (1987) 26

Soto v. Carrasquillo, 878 F. Supp. 324 (D.P.R. 1995) . . . . . passim

Soto v. Flores, 103 F.3d 1056 (1st Cir. 1997) . . . . passim

Stanley v. Illinois, 405 U.S. 645 (1972) 25

Stella v. Kelley, 63 F.3d 71 (1st Cir. 1995) 19

Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) 24

Thurman v. City of Torrington, 595 F. Supp. 1521 (D. Conn. 1984) 14

Trujillo v. Board of County Comm'rs, 768 F.2d 1186 (10th Cir. 1985) . . . . . passim

United States v. Lanier, __U.S.__, 117 S.Ct. 1219 (1997) 17, 18, 19

United States v. Virginia, __U.S.__, 116 S.Ct. 2264 (1996) 16

Vasquez v. Hernandez, 60 F.3d 325 (7th Cir. 1995), *cert. denied*, __U.S.__, 116 S.Ct. 1545 (1996). 22

Ward v. City of San Jose, 967 F.2d 280 (9th Cir. 1992) . 23

Washington v. Davis, 426 U.S. 229 (1976) 10

Watson v. City of Kansas City, 857 F.2d 690 (10th Cir. 1988) . . . . . passim

Wayte v. United States, 470 U.S. 598 (1985) 14

White v. Rochford, 592 F.2d 381 (7th Cir. 1979) 18

Williams v. City of Boston, 599 F. Supp. 363 (D. Mass. 1984), *aff'd*, 784 F.2d 430 (1st Cir. 1986) 20

Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990) 18, 19, 20

Constitutional Provisions

U.S. Const. Amend XIV . . . . . passim

Statutes

Civil Rights Law
42 U.S.C. § 1983 . . . . . passim

Judicial Code
28 U.S.C. § 1254(1) 1
28 U.S.C. § 1343 7
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Puerto Rico Domestic Abuse Prevention and Intervention Act
P.R. Laws Ann. tit. 8, §§ 631 *et seq.*
(Supp. 1995) . . . . . passim

Fed. R. Civ. P. Rule 8(a) 29

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PETITION FOR WRIT OF CERTIORARI

Flor Maria Soto respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the First Circuit in this case, filed on January 13, 1997.

OPINIONS BELOW

The First Circuit Court of Appeals affirmed the judgment of the United States District Court for the District of Puerto Rico granting summary judgment. The First Circuit's opinion is reported at 103 F.3d 1056 and is reprinted in the Appendix hereto at 1a-32a. The district court's opinion granting summary judgment for the respondents (33a-49a) is reported as *Soto v. Carrasquillo*, 878 F. Supp. 324 (D.P.R. 1995). The district court's denial of petitioner's motion for reconsideration (50a-54a) is unreported.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Court to review the judgment of the court of appeals under 28 U.S.C. § 1254(1).

The opinion of the court of appeals from which petitioner seeks review was filed on January 13, 1997. This petition for a writ of certiorari is timely filed within the extension of time allotted by this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The texts of the Fourteenth Amendment, Section 1 to the United States Constitution, as well as the texts of 42 U.S.C. § 1983, and Puerto Rico Laws Annotated title 8, §§ 601 *et seq.* are set forth in the Appendix at 55a-74a and are listed in the Table of Contents.

STATEMENT OF THE CASE

A. Factual Background

Flor Maria Soto Vega ("Soto") and Angel Rafael Rodriguez ("Rodriguez") were married less than a year when Rodriguez began to abuse Soto emotionally and physically. This abuse was constant throughout their ten-year marriage, and was apparent to family, friends and neighbors. Soto endured nine years of beatings and emotional abuse, but never sought help from the police because she was afraid of her husband, who had threatened to kill her and her family if she did, and brandished a gun on several occasions to illustrate his intentions. (4a)

Soto's reluctance to seek assistance from the police was compounded by the fact that Rodriguez was very friendly with several officers from the Palmer Police Station, the neighborhood station, particularly Luis Carrasquillo-Morales ("Carrasquillo") and respondent Carlos Flores-Moreira ("Flores"). Rodriguez, known to the officers as "Rafi," did gardening, maintenance, and vehicle repair work for the officers, and visited the station almost daily. In turn, Flores frequently visited the Rodriguez-Soto home on his rounds, often stopping to talk over a cup of coffee.

On April 17, 1991, after suffering a brutal beating about her face and neck, Soto waited until Rodriguez fell asleep, and then took her two young children, Flor Azalea ("Sally"), her eight year old daughter, and Chayanne, her two year old son, to her mother's house. On that night, Soto's mother finally convinced her to seek police protection.

When Soto arrived at the Palmer Police Station, she approached Officer Flores, the desk officer on duty, and, crying, explained that Rodriguez had beaten and threatened her. Flores, seeing Soto marked with "ugly hematomas," radioed the two patrol officers on duty and told them to come to the station

and take a Domestic Abuse Prevention and Intervention Act, P.R. Laws Ann. tit. 8, §§ 631 *et seq.* (Supp. 1995) ("Law 54"), complaint from "Rafi's wife." (4a) While Soto waited for the officers to arrive, Flores told her that he had domestic violence problems with his wife, and urged her to go home and "patch things up" with Rodriguez. Soto responded that Rodriguez was drunk and violent, and showed Flores the bruises she sustained from the beating that day. (4a)

Soon thereafter, Sergeant Juan Orta ("Orta"), the precinct supervisor, and the two patrol officers, Carrasquillo and Jose Serrano, arrived in succession at the station. Officer Flores informed them that Soto was the woman with the Law 54 complaint. (4a)

In a room several feet from Flores' desk, Officer Carrasquillo interviewed Soto. Flores overheard Soto's recounting of the abuse to Carrasquillo. Soto explained that she had been beaten, and showed Carrasquillo the bruises on the left side of her face and body. When Carrasquillo asked her whether she wanted Rodriguez arrested, Soto did not directly respond, but instead explained that Rodriguez had told her that if she attempted to put him in jail, he would kill her mother and sisters so that when she went to their wake, he would kill her. Soto asked Carrasquillo to do whatever was appropriate given these circumstances. (5a) Soto mistakenly believed that Carrasquillo was preparing a Law 54 complaint against Rodriguez based on this information. (5a)

Despite Soto's statements and the physical manifestations of recent abuse, Carrasquillo did not initiate the domestic violence complaint process, or take *any* of the actions required by Law

54.[1] Instead, Carrasquillo, as had Flores prior to the patrol officers' arrival, offered to allow Soto to spend the night at the station. She refused, returning to her mother's home with her children.

During her time at the station, no one, not Carrasquillo, not Flores, not any other officer, told Soto about the availability of battered women's shelters or the procedures for obtaining an order of protection, as they were required to do under Law 54. Carrasquillo did not even prepare a domestic violence report. Instead, he wrote up an "Other Services Report," falsely indicating that Soto had merely sought information regarding child custody issues. Sergeant Orta signed this report, though he plainly knew that his officers had not complied with Law 54.

No charges were filed against Rodriguez as a result of Soto's complaint that night, nor was any protective order procured for Soto or her family. Instead, the next day, and only hours after Soto had sought help from the police, Flores, although aware of Law 54's confidentiality provision, went to the couple's home and told Rodriguez that Soto had been to the precinct, registered a complaint against him, and that pursuant to Law 54 he could be arrested. (6a-7a) Rodriguez was enraged. He went to Soto's mother's home and told Hipolita, Soto's mother, and Glorivee, Soto's sister, that "the boys" from the station had told him that Soto wanted him in jail, and that he would not allow that to happen. (7a)

The next day, Rodriguez confronted Soto at a local tire shop and told her that Flores had been to their home and told him

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[1]An administrative investigation conducted by the Puerto Rico Police Department concluded that Officer Carrasquillo acted "contrary to what is provided on page 13, Letter I, Number 1 of General Order 86-16 (Rev. 1) 'Norms and Procedures to Handle Incidents of Domestic Violence.' Neither did he take any other step, pursuant to the provisions of Article VI of Law 54 of August 15, 1989." (7a)

that she was going to have him arrested. Out of fear, Soto denied her visit to the police and eventually Rodriguez left. (7a-8a)

On April 20, Rodriguez again sought out Soto at her mother's home and, by promising them a day at the beach, succeeded in taking the children with him. When he did not return the children by the following night, Sunday, April 21, Soto went to her home intending to pick them up and bring them back with her to her mother's house to get them ready for school the next day. When she arrived, Soto heard her daughter Sally shout "Papi, Mommy's here." Soto heard a gunshot, followed by her daughter saying "Daddy, no, Daddy, no" and then two more gunshots. Rodriguez had shot both children in the head and then killed himself. Both children died on the way to the hospital. On the wall of the room where he had shot the children, Rodriguez had written a message: "you left me, and Officer Flores knows it...Law 54, which is only a tool for women to make men do whatever they want, is not liberty." (8a)

Law 54

Law 54, enacted by the Puerto Rican Legislature in 1989, is the most comprehensive domestic violence law in the United States. Its mandatory arrest provision requires the arrest of an abuser, without need for a warrant, whenever an officer has probable cause to believe that the Law has been violated. P.R. Laws Ann. tit. 8, §§ 631-35, 638 (Supp. 1995). (65a-69a) Implementing regulations detail an officer's responsibilities under the Law, and specifically state that arrest determinations are *not* to be affected by irrelevant factors, including victim reluctance. Rules and Procedures to Attend to Domestic Violence Incidents ("Regulations"), Puerto Rico Police General Order No. 86-26m (Rev. 1). (75a-95a) The Regulations also explicitly state that police attempts at mediation or reconciliation shall not substitute for arrest. *Id.*

Under Law 54, police officers are required to take all steps

necessary to prevent abuse from recurring, including providing the complainant with information about medical and social services and transportation to a safe place. § 640. (70a-71a) In this regard, both the Law and the Regulations also require that all domestic violence reports, which must be completed regardless of whether charges are ultimately brought by the district attorney, be kept confidential, and that copies be issued only upon a court order. § 641. (71a-72a)

Official Resistance To Law 54

Law 54 has had little, if any, success in changing the longstanding policies and practices of the police and other officials of dissuading women from making formal domestic violence complaints, failing to provide these victims with protective services and shelter, and avoiding prosecution of abuse cases that make it into the criminal justice system. Thus, while Regulations were promulgated under the Law, respondent Ismael Betancourt y Lebron ("Betancourt"), the Superintendent of Police, provided street level officers with no training on either the Law or the Regulations. Indeed, Flores had not received official training on Law 54. *Soto*, 103 F.2d at 1056.

Moreover, from the bottom of the ranks to the top, officers in the Puerto Rico Police Department consistently resisted implementing the Law and openly expressed their disagreement with its fundamental objectives. (110a-112a) According to respondent Flores, officers "shied away from" Law 54 cases, and "many officers, in order to avoid the procedures involved in making an arrest, tried to persuade domestic violence victims to seek protective orders instead." *Soto v. Carrasquillo*, 878 F. Supp. 324, 329 (D.P.R. 1995) (record citations omitted). (42a) Respondent Betancourt was well aware that members of the force did not intend to enforce Law 54 or comply with its requirements. *Id.* He stated publicly that Law 54 was a failure, and that social services options should be emphasized instead, and refused to meet with the Women's Affairs Commission (the "Commission"), the government agency

charged with overseeing implementation of the Law. He even refused to make members of the Police Department available to the Commission for officer training and orientation under Law 54. (45a)

B. Procedural History

Petitioner brought this action against respondents Betancourt and Flores on April 14, 1993, alleging violations of her right to equal protection and due process of law. She invoked the jurisdiction of the federal district court pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1343, and 28 U.S.C. § 1331. On January 20, 1995, the United States District Court for the District of Puerto Rico granted summary judgment as a matter of law in favor of respondents. (49a)

Soto moved for reconsideration and for leave to amend her complaint to allege a due process claim on behalf of her children. On July 3, 1995, the district court treated the complaint as amended, and denied her motion for reconsideration, holding that although Soto may have a cognizable claim for the violation of her children's due process rights as a representative of their estates, such a claim was nevertheless barred on grounds of qualified immunity under *DeShaney v. Winnebago County Dep't of Social Serv.*, 489 U.S. 189 (1989). (51a)

On January 13, 1997, the First Circuit Court of Appeals affirmed the district court's decision, concluding that respondents were protected by qualified immunity from Soto's due process claims, and that Soto failed to satisfy her burden of proof on the equal protection claim. (15a-31a)

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS IMPORTANT ISSUES CONCERNING THE APPROPRIATE STANDARD FOR ASSESSING INTENTIONAL DISCRIMINATION IN DOMESTIC VIOLENCE EQUAL PROTECTION CASES

Each year, thousands of women are killed or seriously injured by their husbands or partners, even in places where there are specific laws designed to address this gender-based violence. This crisis is exacerbated by the failure of local law enforcement authorities to treat domestic violence as a serious crime and to enforce the criminal laws as stringently in cases of domestic violence against women as in nondomestic assault and battery situations. Even when lawmakers enact special legislation, as in the instant case, police officials continue to ignore specific mandates to arrest and prosecute male aggressors.

As a result of the systematic failure of the police to protect women and enforce existing laws, victims of domestic violence have sought relief under 42 U.S.C. § 1983 for violations of their right to equal protection of the law. However, this Court has not yet addressed the standard for establishing intent to discriminate against women who are victims of domestic violence. In the absence of such guidance, lower courts, including the First Circuit, have relied on the highly restrictive test which was first set out in *Watson v. City of Kansas*, 857 F.2d 690, 696 (10th Cir. 1988). These courts have held that *Watson* requires a plaintiff to present direct evidence demonstrating that gender-based animus was a motivating factor in order to survive summary judgment. *Soto*, 103 F.3d at 1066, 1070 (citations omitted). Under *Arlington Heights*, 429 U.S. at 266, and its progeny, this Court has made clear that such an approach improperly precludes the use of indirect or circumstantial evidence, including the obviously gender-based

discrimination underlying the differential treatment accorded domestic violence assaults as compared to other assaults, to infer intent to discriminate. The First Circuit's reliance on the *Watson* test led to the shocking result in the case at bar.

Despite a specific and comprehensive law to address domestic violence, which includes mandatory arrest, and the deliberate statements and actions of respondents Flores and Betancourt opposing the requirements and purpose of that law, the First Circuit found insufficient evidence of discriminatory intent to send the case to a jury. This case raises a vitally important issue and presents particularly appropriate facts for this Court to make clear the proper analysis for determining the existence of discriminatory intent when police provide inferior and inadequate services to women victims of domestic violence.

A. The Court Of Appeals Erred By Failing To Assess Petitioner's Equal Protection Claim Under The *Arlington Heights* Framework

Despite this Court's well-established framework, set forth in *Arlington Heights*, 429 U.S. at 266, for assessing discriminatory intent in claims brought under the Equal Protection Clause of the Fourteenth Amendment, the First Circuit employed a different test to evaluate petitioner's domestic violence equal protection claim. Indeed, rather than undertaking the "sensitive inquiry into such *circumstantial* and direct evidence as may be available," *Reno v. Bossier Parish School Board*, ___ U.S. ___, 1997 WL 235097 at *11 (1997) (quoting *Arlington Heights*, 429 U.S. at 266) (emphasis added), the court below wrongly applied the more restrictive standard articulated in *Watson*, 857 F.2d at 696.

In so doing, the Court of Appeals required petitioner to proffer direct evidence that discrimination against women motivated respondents' actions in order to survive summary judgment, *Soto*, 103 F.3d at 1066, 1070, and discounted the

significant circumstantial evidence that Soto presented.

Moreover, this erroneous approach has been adopted by some courts, *see, e.g., Ricketts v. City of Columbia*, 36 F.3d 775, 779 (8th Cir. 1994), *cert. denied*, 115 S.Ct. 1838 (1995); *McKee v. City of Rockwall*, 877 F.2d 409, 413 (5th Cir. 1989), *cert. denied*, 493 U.S. 1023 (1990); *Hynson v. City of Chester*, 864 F.2d 1026, 1032-33 (3rd Cir. 1988), and been rejected by others. *See Balistreri v. Pacifica Police Dep't*, 855 F.2d 1421, 1427 (9th Cir. 1988) (finding that certain circumstantial evidence, such as a statement by an officer that he did not "blame plaintiff's husband for hitting her, because of the way she was 'carrying on,'" was sufficient to infer gender animus); *Doe v. Calumet City*, 161 Ill.2d 374, 399-400, 641 N.E.2d 498, 510 (1994) (inferring gender animus from inadequate police response, including an officer's rude and demeaning questioning of a victim who had just escaped her aggressor and the officer's reference to the victim as a "girl"). It is particularly important for the Court to remedy the error here so that female victims of domestic violence can demonstrate an inference of invidious discrimination on the basis of circumstantial evidence.

Under the *Arlington Heights* framework, intent may be "inferred from the totality of the relevant facts," *Washington v. Davis*, 426 U.S. 229, 242 (1976), and thus, an analysis of the existence of discriminatory intent should include: 1) "the impact of the official action"; 2) "the historical background of the decision"; 3) "[t]he specific sequence of events leading up to the challenged decision"; 4) "[d]epartures from the normal procedural sequence"; and 5) the administrative history of the decision, "especially where there are contemporary statements by members of the decisionmaking body." *Arlington Heights*, 429 U.S. at 266-68.

In the instant case, the court below, applying the *Watson* test, 857 F.2d at 694, searched unsuccessfully for an overtly discriminatory statement by respondents Flores and Betancourt.

Soto, 103 F.3d at 1070-72. The insistence by the court on a "smoking gun" is patently inconsistent with *Arlington Heights*, and indeed with the *Soto* court's own language.[2] Had the Court of Appeals instead applied the proper analysis, it undoubtedly would have found that petitioner had presented sufficient evidence of discriminatory intent to survive summary judgment.

As the Court recently reiterated, the "important starting point" in the *Arlington Heights* analysis is "the impact of the official action," because it is "probative of why the action was taken in the first place". *Bossier Parish*, 1997 WL 235097 at 11-12. When an adverse effect is predictable, it is relevant to the assessment of intent. *See, e.g., Columbus Board of Education v. Penick*, 443 U.S. 449, 464-65 (1979); *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 n.25 (1979).

Respondent Flores not only failed to enforce Law 54, but he also, by notifying Rodriguez that Soto filed a complaint, affirmatively undermined it. Furthermore, the horrendous impact of these actions -- the denial of mandated protective services to Soto because she was a woman abused by her husband, and Rodriguez' further commission of violence -- was *plainly* foreseeable.

The logical consequence of respondents' failure to comply with the requirements of Law 54 is that female victims of domestic violence who seek police assistance will not receive adequate assistance, and therefore will most likely face

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[2]Although the First Circuit acknowledged that "[w]ithout the smoking gun of an overtly discriminatory statement by a decisionmaker, it may be very difficult to offer sufficient proof of such purpose," *id.* at 1067, it nonetheless concluded that the stringent *Watson* standard was "more in keeping with the Supreme Court's approach to equal protection challenges to facially neutral policies." *Id.* at 1068.

continued abuse from their aggressors. This consequence is, in light of the Puerto Rican legislature's findings, as set forth below, plainly foreseeable, and permits an inference that respondents intended for the status quo of the abusive relationship to continue; as *Bossier Parish* stated, "people usually intend the natural consequences of their actions." 1997 WL 235097 at *11.

In addition, respondents' resistance to enforcing Law 54 reflects the "discriminatory ideas, attitudes and conduct" affecting Puerto Rican social institutions that the Legislature sought to correct by enacting Law 54. § 601(60a-61a). Deeply rooted stereotypes -- *i.e.*, that domestic abuse is an issue of family privacy, and that the integrity of the family should not be disrupted by the police -- are merely different iterations of the archaic notion that a man has the right to exercise dominion and control over his female spouse or partner.[3] These stereotypes provide the historical background for respondents' deeply troubling response in this case, *Soto*, 103 F.3d at 1070 & n.13, and are therefore a key factor to be considered under the *Arlington Heights* framework. *See Arlington Heights*, 429 U.S. at 267. Indeed, statements made by respondent Betancourt regarding his officers' resistance to enforcing the Law "due to their way of thinking" plainly evince the problematic and ingrained attitudes toward the issues raised by domestic violence cases. Furthermore, Betancourt legitimized this resistance by publicly stating that domestic violence "should not be criminalized."[4] (42a)

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[3]See Rivera, *Puerto Rico's Domestic Violence Prevention and Intervention Law and the United States Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 Colum. J. Gender & L. 78, 94-95 (1995).

[4]The attitude among the police force toward domestic violence cases is further demonstrated by Sergeant Orta, Flores' supervisor, who overtly displayed gender animus by, *inter alia*, expressing his "total disagreement" with Law 54, and finding it "unjust" to men because "[s]ometimes men, including myself ... has a woman on the side or a friend on the side, and one has an argument with

When viewed against this backdrop, the events of this case seem, tragically, to illustrate the magnitude of the problem. As described above, although Soto obviously was seeking police assistance as a victim of assault and battery, Officer Flores nevertheless attempted to dissuade her from filing a complaint. Instead, he urged her to return to her husband to discuss the situation. This advice would never be administered in a non-domestic assault case. Further, when Soto was interviewed by Carrasquillo, he failed to take any action to protect her as required under Law 54. Similarly, Flores, although aware of Carrasquillo's lack of compliance with the Law, took no action to remedy that situation. Thus, when Soto left the station, she had been afforded no protection whatsoever -- no complaint was submitted, she was not advised about seeking a protective order, nor was she offered a safe haven. § 640. (70a-71a)

Further, when Flores, discussing Soto's complaint later that evening with his superior, Sergeant Orta, mentioned that he planned to speak to Rodriguez about the situation the next day, Orta did not attempt to dissuade him from committing this egregious violation of the confidentiality provisions of the Law. The following day, Flores informed petitioner's husband that his wife had come to the precinct, even though Flores knew the husband had made death threats and had physically abused petitioner. *Soto*, 103 F.3d at 1060.

The sequence of events in this case and the significant departures from normal procedures -- wholly disregarded by the First Circuit -- support the inference that respondent Flores was motivated by gender animus. Flores knew, based on his own discussions with both petitioner and Sergeant Orta, that, because Rodriguez had committed a crime under Law 54, he was obligated to arrest him. § 638 (69a) ("[E]very law enforcement

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one's lady friend and goes home and takes it out on the wife." *Soto*, 103 F.2d at 1069.

officer shall make an arrest ... if he has grounds to believe" a violation of Law 54 occurred). An equally -- if not more -- egregious departure from the Law's requirements was Flores' deliberate breach of the confidentiality provisions. In sum, Flores' conduct flouted the basic and cardinal requirements of the Law. Although the First Circuit was obviously cognizant of this, *Soto*, 103 F.3d at 1060, it did not consider such departures to be relevant to its intent analysis. In short, by insisting on evidence of respondents' overt discrimination, the First Circuit erroneously failed to give these facts due consideration.

B. The Court of Appeals Erred By Failing To Determine Whether Police Custom And Practice Contains A Gender-Based Classification

By relying solely on the *Watson* test, the Court of Appeals failed to consider whether the police department's custom and practice, when responding to domestic violence complaints brought by women, was premised on an improper gender-based classification. *See Feeney*, 442 U.S. at 273-74 ("[t]he first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based"). If respondents' challenged actions were pursuant to such a custom or practice, Soto's claim should not have been dismissed at the summary judgment stage; the existence of a gender-based classification obviates the need for a showing of discriminatory intent. *See Wayte v. United States*, 470 U.S. 598, 608 n.10 (1985); *Feeney*, 442 U.S. at 273-74; *see also Thurman v. City of Torrington*, 595 F. Supp. 1521, 1527 (D. Conn. 1984) (concluding that police practice of affording inadequate protection to female domestic violence victims is a "classification used to implement the law in a discriminatory fashion").

Had the First Circuit properly analyzed Soto's equal protection claim in this regard, it would have considered that specific legislative findings acknowledge the existence of a

custom or practice containing a gender-based classification: (1) domestic violence primarily affects women and is "one of the most critical manifestations of the effect of the inequities in the relationships between men and women," § 601 (60a); (2) the efforts of Puerto Rican social institutions -- including the police department -- to address domestic abuse had been "limited, and often inadequate," *id.*; *see also* Rivera, 5 Colum. J. Gender & L. at 94-95 (describing official resistance to implementation of Law 54); and (3) these social institutions are permeated with gender "discriminatory ideas, attitudes and conduct." § 601. (60a-61a)

The existence of a gender-based discriminatory policy is further evinced by the statements of Superintendent Betancourt that implementation of Law 54 was difficult because of "easily detectable," "active resistance" by officers, *id.* at 40, and that this resistance was a consequence of "certain ways of thinking." *Id.* at 42. Betancourt also openly expressed his opinion that domestic violence should be addressed by social workers and psychologists rather than through punitive measures. *Id.*

Respondent Betancourt's statements plainly demonstrate the pervasive social attitudes regarding domestic violence which are based on the stereotypic notion that, within the parameters of their domestic relationship, men can treat women any way they choose. Domestic abuse of women has been, and continues to be, perceived as a less serious matter than other violent assaults because the "family" is considered a "private" domain in which the woman is not autonomous, but rather controlled by the man.[5]

The long-standing acceptance of the practice of providing

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[5]See Marcus, *Conjugal Violence: The Law of Force and the Force of Law*, 69 Calif. L. Rev. 1657 (1981); Romany, *Killing the Angel in the House: Digging for the Political Vortex of Male Violence Against Women*, in *The Public Nature of Private Violence* at 201 (M. Fineman ed. 1994).

female victims of domestic abuse with an inadequate and inferior police response is rooted in these "archaic and stereotypic notions," *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 723-24 (1982), and serves to "perpetuate the legal, social, and economic inferiority of women." *United States v. Virginia*, ___ U.S. ___, 116 S.Ct. 2264, 2276 (1996). In Puerto Rico, this practice is so deeply entrenched that the enactment of Law 54 has done little to change it. Respondent Flores deliberately ignored, and then intentionally undermined the basic tenets of the law that it was his duty to enforce.

II. THE FIRST CIRCUIT ERRONEOUSLY GRANTED RESPONDENTS QUALIFIED IMMUNITY DESPITE THEIR CLEAR LIABILITY UNDER THE STATE-CREATED DANGER DOCTRINE

Respondent Flores violated Soto's Fourteenth Amendment substantive due process rights under the state-created danger doctrine[6] when he told her husband that she both visited the police station and wanted to put him in jail. Nonetheless, because the *Soto* court wrongly concluded that respondent Flores should be granted qualified immunity, it did not address petitioner's substantive due process claim.

Had the court below undertaken the appropriate analysis, it would have found that petitioner's claim fell squarely within the parameters of the state-created danger doctrine. Specifically, Flores, despite being aware of Rodriguez' threats to petitioner and her family, *Soto*, 103 F.3d at 1060, heedlessly disregarded Law 54's confidentiality provision, *see* § 641 (71a), by

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[6]Judge Posner articulated the state-created danger theory as follows: "If the state puts a man in a position of danger from private persons and then fails to protect him, it will not be heard to say that its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit." *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982), *cert. denied*, 470 U.S. 1052 (1985).

informing Rodriguez that petitioner told the police that he abused her. Flores created a dangerous situation for Soto and her entire family, eventuating in the deaths of petitioner's two children. The message from Rodriguez, scrawled on the wall of the room where the murders occurred -- "you left me, and Officer Flores knows it" -- tragically underscores this point.[7]

Rather than addressing petitioner's due process claim, the First Circuit concluded that "the contours of the [state-created danger doctrine] were [not] sufficiently plain [in April 1991 such] that a reasonably prudent state actor would have realized ... that his conduct ... violated a particular constitutional right," *Soto*, F.3d at 1065 (citation omitted) and granted respondents qualified immunity.[8] The First Circuit's holding is in direct conflict with other circuit courts which have, with regard to acts committed prior to April 1991, permitted § 1983 recovery for Fourteenth Amendment substantive due process violations under a state-created danger theory. The court below failed to consider adequately apposite decisions from other circuits, as well as caselaw from its own circuit.

In 1989, "[i]n *DeShaney*, the Supreme Court acknowledged that state actions that create dangers or render private citizens

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[7]Indeed, Flores, by imparting such confidential information to Rodriguez, a personal friend, not only "increas[ed] the vulnerability of decedents to the action of [Rodriguez] [but] possibly ratif[ied] or condon[ed] such violent actions on [Rodriguez'] part." *Freeman v. Ferguson*, 911 F.2d 52, 54 (8th Cir. 1990) (court discussed situation in which Police Chief's personal relationship with alleged abuser may have interfered with providing decedents with appropriate protective services).

[8]"[Q]ualified immunity seeks to insure that defendants 'reasonably can anticipate when their conduct may give rise to liability,' [*Davis v. Scherer*, 468 U.S. 183, 195, (1984)], by attaching liability only if '[t]he contours of the right [violated are] sufficiently clear that a reasonable official would understand that what he is doing violated that right.'" *United States v. Lanier*, ___ U.S. ___, 117 S.Ct. 1219, 1227 (1997) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

more vulnerable to harm could amount to constitutional violations."[9] *Soto*, 103 F.3d at 1065; *see also Kneipp v. Tedder*, 95 F.3d 1199, 1205 (3d Cir. 1996). When this Court has not expressly determined if a particular right is clearly established, it "refer[s] to decisions of the Courts of Appeals." *Lanier*, 117 S.Ct. 1219, 1226 (1997).

It is uncontroverted that, by 1991, when petitioner's children were killed, several other circuits, in addition to the Seventh and Ninth Circuits, had explicitly recognized the vitality of the state-created danger doctrine. *See Freeman v. Ferguson*, 911 F.2d 52, 54 (8th Cir. 1990); *Cornelius v. Town of Highland Lake*, 880 F.2d 348 (11th Cir. 1989), *cert. denied*, 494 U.S. 1066 (1990); *Nashiyama v. Dickson County*, 814 F.2d 277, 282-83 (6th Cir. 1987) (en banc).[10] Indeed, no court has ever "explicitly denounce[d] the state-created danger doctrine as an illegitimate theory upon which to base a § 1983 constitutional claim." *DiJoseph v. City of Philadelphia*, 953 F. Supp. 602, 610 (E.D. Pa. 1997).

According to well-established First Circuit law, "[t]he inquiry into the nature of a constitutional right for the purpose of ascertaining clear establishment seeks to discover whether the right was *reasonably* well settled at the time of the challenged conduct and whether the manner in which the right related to the conduct was apparent." *Martinez v. Colon*, 54 F.3d 980,

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[9]In fact, according to the Ninth Circuit, "[b]y 1984 [five years prior to *DeShaney*], the [state-created danger doctrine] had been established by [*White v. Rochford*, 592 F.2d 381 (7th Cir. 1979)] and clearly articulated by [*Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982)] and [*Jackson v. City of Joliet*, 715 F.2d 1200 (7th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984)]." *Wood v. Ostrander*, 879 F.2d 583, 594 (9th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990).

[10]By the court below's own calculation, between the *DeShaney* decision and the present, seven Courts of Appeals have recognized the state-created danger doctrine. *See Soto*, 103 F.3d at 1065. (16a)

988 (1st Cir.) (citation omitted) (emphasis added), *cert. denied*, __ U.S. __, 116 S.Ct. 515 (1995); *see also Stella v. Kelley*, 63 F.3d 71, 72 (1st Cir. 1995). As acknowledged by the court below, that inquiry must include reference to the decisional authority of other circuits.[11] Indeed, this Court has sanctioned this approach. *See Lanier*, __ U.S. __, 117 S.Ct. at 1226.

Despite the above, and fleeting reference to the Eleventh and Ninth Circuit decisions in *Cornelius*, and *Wood*, respectively, the court below nonetheless concluded that, in April 1991, the contours of the violation were not clearly established. *Soto*, 103 F.3d at 1065. In finding that the state-created danger caselaw was "*somewhat* confusing," and its history "uneven," *id.* (emphasis added), the court below relied upon one Eleventh Circuit case, *Cannon v. Taylor*, 782 F.2d 947, 950 (11th Cir. 1986), and the Third Circuit's 1996 decision in *Kneipp*, 95 F.3d at 1208-10.

Upon close examination of these cases, however, they lend no support for the First Circuit's conclusion. *Cannon* did not involve a state-created danger. Rather, in *Cannon*, 783 F.2d at 948, a policeman killed the plaintiff when he crashed into her car while speeding in response to a disturbance call. Moreover, the *Soto* court failed to note that three years after *Cannon*, and two years *before* the murder of petitioner's children, the Eleventh Circuit in *Cornelius* 980 F.2d at 355-359, without reference to *Cannon*, had recognized and applied the state-created danger theory as a basis for establishing a constitutional claim under § 1983. Furthermore, referring to *Kneipp*, the court below inaccurately contended that only the "more recent judicial opinions ... have begun to clarify the contours of [the

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[11] *See Soto*, 103 F.3d at 1065 ("Of course, a violation of clearly settled law may be found even where the Supreme Court and the circuit in question have not specifically addressed the question.") (citation omitted); *cf. Borucki v. Ryan*, 827 F.2d 836, 848 (1st Cir. 1987) (because of split in the circuits, the particular privacy right being considered was not clearly established).

state-created danger doctrine]." *Soto*, 103 F.3d at 1065. This conclusion is belied by the cases set forth above.

More importantly, the *Soto* court was incorrect in its finding that the state-created danger doctrine was not clearly established in the First Circuit by April 1991. In this regard, the *Soto* court limited its findings to the following two sentences: "[I]n 1991, the First Circuit had not yet addressed the issue of state-created dangers. The first case from this court to discuss the contours of that doctrine was *Monahan v. Dorchester Counseling Ctr., Inc.*, 961 F.2d 987 (1st Cir. 1992), and that case held that, on the facts alleged there was no constitutional violation." *Soto*, 103 F.3d at 1065. First, *Monahan* was not the first case in the circuit to consider the state-created danger doctrine. Although not yet termed the "state-created danger theory," in 1984, a court in the First Circuit plainly acknowledged the doctrine's validity. *See Williams v. City of Boston*, 599 F. Supp. 363, 366 (D. Mass. 1984) ("Other cases imposing § 1983 liability involve circumstances where the state officer places the victim in a position of peril."), *aff'd*, 784 F.2d 430 (1st Cir. 1986); *see also Estate of Gilmore v. Buckley*, 787 F.2d 714, 722 (1st Cir.) ("The state played no part in creating the threat ... and the state [did not] encourage[] [the] behavior."), *cert. denied*, 479 U.S. 882 (1986).

Second, contrary to the *Soto* court's implication, the fact that *Monahan* "held that, *on the facts alleged*, there was no constitutional violation," is not dispositive of whether the doctrine was clearly established in 1991, when petitioner's children were murdered. *Soto*, F.3d at 1065 (emphasis added). Indeed, after citing to *Wood* and *Cornelius*, among other cases, the *Monahan* court did not question the First Circuit's

acceptance of the state-created danger theory.[12] 961 F.2d at 993. In fact, the Fifth Circuit has stated that *Monahan* stands for the proposition that the "the First Circuit has refused *to extend* the state-created danger doctrine to a case in which the state provided a van to transport a mentally ill person and the person injured himself by jumping out of the van because he was insufficiently restrained." *Lefall v. Dallas Ind. Sch. Dist.*, 28 F.3d 521, 530 (5th Cir. 1994) (emphasis added).

The *Soto* court, by suggesting that there had to be a pre-April 1991 First Circuit decision that found a constitutional violation under the state-created danger doctrine, is misconstruing well-settled First Circuit law. "In making [the] determination [that the doctrine was clearly established in April 1991], we need not find a ruling that considered the precise situation at hand. It is enough, rather, that there existed case law sufficient to clearly establish that, if a court *were* presented with such a situation, the court would find that plaintiffs' rights were violated." *Hall v. Ochs*, 817 F.2d 920, 924-25 (1st Cir. 1987) (citation omitted) (emphasis in original); *see also Germany v. Vance*, 868 F.2d 9, 16 (1st Cir. 1989) (same).

In sum, in April 1991, the contours of the state-created danger doctrine were sufficiently clear so that reasonable police officers would understand that if they either "create[d] dangers or render[ed] private citizens more vulnerable to harm[, those affirmative actions] could amount to constitutional violations." *Soto*, 103 F.3d at 1065.[13]

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[12]Similarly, a few months after the *Monahan* decision, a lower court held that "[a] state may be held liable if it can fairly be said to have affirmatively acted to create or exacerbate a danger to the victims." *Robbins v. Maine School Admin. Dist. No. 56*, 807 F. Supp. 11, 13 (D. Me. 1992).

[13]The *Soto* court did not consider the second prong of the qualified immunity analysis: "If the right is clearly established, the court must then ask whether a reasonable similarly situated officer 'should have understood that the challenged

III. THE FIRST CIRCUIT'S DECISION DISMISSING PETITIONER'S WRONGFUL DEATH CLAIM ALLEGING A VIOLATION OF HER DUE PROCESS RIGHT TO RAISE HER CHILDREN CONFLICTS WITH THE RULINGS OF THE MAJORITY OF THE CIRCUITS

In dismissing Soto's individual claim based on the deaths of her children, the First Circuit has also placed itself directly in conflict with the weight of current decisional authority holding that state action which results in the loss of one's children gives rise to a cognizable due process claim under § 1983. Indeed, of the circuits that have squarely considered this issue, all but the First and Fourth Circuit Courts of Appeals have concluded that parents may bring a § 1983 claim asserting a constitutionally protected right to raise their children, and that this right is violated by the wrongful death of a child.[14]

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conduct violated' that right." 103 F.3d at 1064. However, as the First Circuit said in *Hall*, 817 F.2d at 925, "[s]ince a reasonable public official, particularly a police officer, is expected to know the law, our inquiry is nothing more than an examination whether the events...violated 'clearly established ... constitutional rights.'" (Quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

[14]*See, e.g., Rhyne v. Henderson County*, 973 F.2d 386, 390-91 (5th Cir. 1992) (incorporating state wrongful death law into § 1983 to permit mother to seek recovery for injuries resulting from son's death); *Vasquez v. Hernandez*, 60 F.3d 325 (7th Cir. 1995) (reaffirming its ruling in *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir.), which held that a father may recover under § 1983 for deprivation of constitutional interest where police officers shot and killed son), *cert. denied*, __ U.S. __, 116 S.Ct. 1545 (1996); *Kelson v. City of Springfield*, 767 F.2d 651, 653-55 (9th Cir. 1985) (holding that parents may bring § 1983 action for deprivation of liberty interest in the society of their son where school failed to prevent his suicide); *Estate of Bailey v. County of York*, 768 F.2d 503, 509 n.7 (3d Cir. 1985) (adopting holding of *Bell*); *Trujillo v. Board of County Comm'rs*, 768 F.2d 1186, 1188-89 (10th Cir. 1985) (holding that mother and sister have a constitutionally protected right of familial association); *Mattis v. Schnarr*, 502 F.2d 588 (8th Cir. 1974) (holding that father whose son was shot by a police officer has a claim for deprivation of parenthood under § 1983), *on remand*, 404 F. Supp. 643 (E.D. Mo. 1975), *rev'd on other grounds*, 547 F.2d

The absence of guidance from the Court on this issue has thus resulted in considerable confusion and disagreement among the lower courts on the actual viability of such claims on the one hand, *see Manarite v. City of Springfield*, 957 F.2d 953, 961 (1st Cir.), *cert. denied*, 506 U.S. 837 (1992), and on the foundation and parameters of these claims on the other. *Compare Trujillo*, 768 F.2d at 1188-89 (permitting parents and siblings to assert a First Amendment right to familial association) with *Ward v. City of San Jose*, 967 F.2d 280, 283-84 (9th Cir. 1992) (recognizing a parent's constitutionally protected liberty interest, but rejecting siblings' claim to same), and *Rhyne*, 973 F.2d at 390-91 (limiting the scope of the remedy to that provided under state wrongful death statute.)

Further, courts are also unclear as to the extent that such a claim should be properly viewed as a claim arising under a state's wrongful death statute, a claim authorized by § 1983 itself, or as a separately actionable constitutional violation. *See Crumpton v. Gates*, 947 F.2d 1418, 1420-21 (9th Cir. 1991).

The lack of guidance from the Court on whether there is a uniform rule on the use of § 1983 as a wrongful death remedy has led courts to look initially to state law on the availability of

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1007 (8th Cir. 1976), *vacated as moot sub nom. Ashcroft v. Mattis*, 431 U.S. 171 (1977); *Danese v. Asman*, 875 F.2d 1239 (6th Cir.), *cert. denied*, 494 U.S. 1027 (1990) (deprivation of liberty interest in familial relationship due to suicide of pretrial detainee provided basis for § 1983 claims of parents and siblings); *cf. Greene v. City of New York*, 675 F. Supp. 110, 113-15 (S.D.N.Y. 1987) (illegitimate children of father who was shot by police officer have a § 1983 claim for wrongful deprivation of parenthood); *but see Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556 (1st Cir.), *cert. denied*, 488 U.S. 823 (1988) (holding that a parent cannot maintain a § 1983 claim for loss of familial association unless the government action in question is directly aimed at the parent-child relationship); *Carmona Pacheco v. Betancourt y Lebron*, 820 F. Supp. 45, 46 (D.P.R. 1993) (holding that parents have no claim for the loss of their child where the state action was aimed solely at the decedent); *accord Shaw v. Stroud*, 13 F.3d 791, 804-05 (4th Cir.), *cert. denied*, 513 U.S. 813, (1994) (rejecting spouse's and children's wrongful death substantive due process claim).

the cause of action. All state wrongful death statutes enumerate a list of beneficiaries who have the right to sue for the damages they have suffered. However, state policies on the damages available to survivors differ dramatically. *See* Steven H. Steinglass, "Wrongful Death Actions and Section 1983" 60 Ind. L.J. 559, 578-82 (1985). Such variability constitutes a significant departure from the general policy of approaching § 1983 damages issues under uniform federal standards. *See Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239-40 (1969). The Court has recently accepted a petition for certiorari in *Jefferson v. City of Tarrant*, __ U.S.__, 117 S.Ct. 1333 (1997), in order to address the issues raised in such situations.

Moreover, as a consequence of courts' reliance on independent -- and to some extent mutually exclusive -- theories, different standards are now employed to evaluate these claims. Thus, the Tenth Circuit, under *Trujillo* and its progeny, having grounded the right to parental association in the First Amendment, recognizes only a highly restrictive constitutional remedy, permitting a claim to proceed under § 1983 only when a plaintiff can establish that the state actor *specifically intended* to interfere with the familial relationship. *See, e.g., Bryson v. City of Edmond*, 905 F.2d 1386, 1393 (10th Cir. 1990); *Lucero ex rel. Chavez v. City of Albuquerque*, 140 F.R.D. 455, 458 (D.N.M. 1992) (holding that the required intent is "an intent to interfere with a '*particular*' relationship, rather than an intent to interfere with familial relationships generally") (emphasis in original). In contrast, the Seventh Circuit has plainly stated that it need not employ a similar requisite because the liberty interest it has recognized arises under "[t]he Fourteenth Amendment's Due Process Clause ... [which] contains no such requirement of specific intent." *Sherrod v. Berry*, 827 F.2d 195, 207-208 (7th Cir. 1987), *rev'd in part on other grounds*, 856 F.2d 802 (7th Cir. 1988).

The current confusion among the circuits regarding the viability of, and standard used to assess, a parent's claim for the

wrongful death of a child under § 1983 means that protection against such an egregious deprivation of constitutional rights is dependent upon the vagaries of the jurisdiction in which one's claim arises despite the fact that the cause of action at issue here is a federal one. A uniform federal rule is necessary to achieve the statutory policies of deterring state officials from violating federal constitutional rights and providing compensation for victims of illegal government conduct. *See Owen v. City of Independence*, 445 U.S. 622, 651 (1980); *see also Robertson v. Wegmann*, 436 U.S. 584, 590-91 (1978). Petitioner therefore urges the Court to clarify the scope of this claim.

The decisional authority holding that a parent's interest in the custody, rearing, and companionship of her children is a constitutionally protected due process interest is entirely consistent with this Court's jurisprudence recognizing the primacy of the liberty interest in preserving the integrity and stability of the family from the coercive interference of the state. Indeed, the interests of a parent and a child in their relationship with each other were among the first that the Court acknowledged in its cases defining the "liberty" protected by the Constitution. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925) (education); and *Meyer v. Nebraska*, 262 U.S. 390 (1923) (raising children).

The Court's recognition of this constitutionally protected interest has continued to the present through a long line of cases. In *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972), Justice White, reviewing this history, ringingly reaffirmed the Court's position regarding the strong constitutional protection afforded the parent-child relationship:

> It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when an appeal is made to liberties which derive merely from shifting economic arrangements." (Citations omitted.)

> The Court has frequently emphasized the importance of the family. The rights to conceive and raise one's children have been deemed essential, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), "basic civil rights of man," *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and "[r]ights far more precious ... than property rights," *May v. Anderson*, 345 U.S. 528, 533 (1953).... The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v. Nebraska*, *supra*, 262 U.S. at 399..., the Equal Protection Clause of the Fourteenth Amendment, *Skinner v. Oklahoma*, *supra*, 316 U.S at 541,... and the Ninth Amendment, *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

The Court recently reaffirmed this precept in *M.L.B. v. S.L.J.*, __ U.S. __, 117 S.Ct. 555, 564 (1996) noting that:

> Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of basic importance in our society," (citation omitted), rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect.

In addition to the constitutional protection accorded the parent-child relationship, courts have anchored their decisions finding a § 1983 claim for deprivation of this relationship in the legislative history of the Klu Klux Klan Act of 1871, the precursor to § 1983. *See*, *e.g.*, *Smith v. City of Fontana*, 818 F.2d 1411, 1419 (9th Cir.), *cert. denied*, 484 U.S. 935 (1987); *Bell*, 746 F.2d at 1244. As Representative Butler described the Act:

> This then is what we offer to the people of the United States as a remedy for wrongs, arsons and murders done. This is what we offer to a man whose house has been burned, as a remedy; to the woman whose husband has been murdered, as a remedy; to the children whose father has been killed, as a remedy.

Cong. Globe, 42d Cong., 1st Sess. 807 (1871). This language clearly supports the conclusion that the Act was meant to create a remedy for the wrong alleged by petitioner.[15]

The actions of the police here constitute the same affirmative abuse of government power which the substantive protections of the due process clause are designed to prevent. Thus, like the plaintiffs in *Bell*, *Kelson*, *Smith*, *Trujillo*, and myriad other cases to date, Soto has a constitutionally protected interest in preserving the lives and physical safety of her children from deprivations caused by state action, a right that extends from her recognized liberty interest in the custody of her children and the maintenance and integrity of the family. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Based on these precedents, petitioner urges this Court to uphold the well-reasoned determinations of the majority of circuits that a parent whose child has died as a result of unlawful state action may maintain an action under § 1983 for the deprivation of her liberty interest in the companionship of her child.

IV. THE FIRST CIRCUIT ERRONEOUSLY FAILED TO ADDRESS PETITIONER'S DEPRIVATION OF HER LIBERTY AND PROPERTY ENTITLEMENTS, AS ESTABLISHED BY LAW 54, WITHOUT DUE PROCESS OF LAW

It is well-established that "a State may create a liberty interest protected by the Due Process Clause through its enactment of certain statutory or regulatory measures." *Hewitt v. Helms*, 459 U.S. 460, 469 (1983); *see also Board of Regents v. Roth*, 408 U.S. 564 (1972). For such an interest to rise to

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[15]As the court concluded in *Bell*, while the statutory language makes a clearer case for a claim on behalf of the child due to the loss of support of a parent, "recognition of the child's rights vis-a-vis parental loss logically implies the reciprocal recognition of the parent's rights vis-a-vis the loss of a child." *Bell*, 746 F.2d at 1244.

the level of a federal constitutionally protected interest, the claimant must have "more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must have a legitimate claim of entitlement to it." *Id.* at 577.

The basis for such an entitlement is the mandatory nature of the state law and regulations. Thus, Fourteenth Amendment protections attach where the legislation contains "specific directives to the decision maker that if the [statute's] substantive predicates are present, a particular outcome must follow ..." *Bagley v. Rogerson*, 5 F.3d 325, 328 (8th Cir. 1993)(quoting *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 463 (1989)). In such a situation, the individual's expectation of a particular benefit is based on the state's own directive that there be a specific response to the individual. As noted in *Bagley*, "[i]f a state law gives me the right to a certain outcome in the event of the occurrence of certain facts, I have a right, by virtue of the Fourteenth Amendment, to whatever process is due in connection with the determination of whether those facts exist." *Id.* at 328.

The First Circuit, although not addressing Soto's due process claim, had, nonetheless, previously recognized state-created entitlements subject to constitutional due process protections, where the state actor's discretion is curtailed by either legislation or regulatory orders. *See Collins v. Marina-Martinez*, 894 F.2d 474 (1st Cir. 1990) (constitutionally protected property interest in tenure status); *Glidden v. Atkinson*, 750 F. Supp. 25, 26 (D. Me. 1990) (prisoners' property interest in prison jobs does not exist "unless state laws or regulations are to the contrary"); *Diaz Camacho v. Lopez Rivera*, 699 F. Supp. 1020 (D.P.R. 1988) (fire department's permanent employees have property interest in continued employment). In determining the existence of such an entitlement, courts consider the specific statutory language as well as the overarching regulatory scheme:

[T]he test for whether a statutory or regulatory procedure

> creates a protected due process interest is whether the state statutes or regulations have used "language of an unmistakably mandatory character, requiring that certain procedures 'shall,' 'will,' or 'must' be employed,"....
> *Kellas v. Lane*, 923 F.2d 492, 494 (7th Cir. 1990).[16]

In the case at bar, Law 54 and the Regulations mandate particular police procedures and actions, which, in turn, severely restrict police officers' discretion in domestic violence cases. This forms the basis of petitioner's constitutionally protected entitlement to protective services and other specific actions by the police. When Soto went to the Palmer Police Station on April 17, 1991, and informed the officers on duty that her husband had beaten and threatened to kill her, she had the right "to whatever process [was] due in connection with the determination of whether those facts exist." *Bagley*, 5 F.3d at 328.[17] Soto, however, was denied any process, and, in fact,

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[16]*DeShaney* explicitly left open the possibility of a state-created entitlement to protective services, necessarily suggesting the continued propriety of such claims. *DeShaney*, 489 U.S. at 195, n.2.

[17]The First Circuit erroneously concluded that Soto failed to raise the claims below, *Soto*, 103 F.3d at 1062, n.5, while the district court wholly failed to address the issue. *See Soto*, 878 F. Supp. at 324. However, throughout this protracted litigation, Soto has zealously asserted her procedural due process claims. Count I, paragraph 14 of the amended complaint charges that respondents failed to comply with Law 54, and that such actions injured Soto and violated her civil rights. (104a) On appeal, Soto alleged that "[t]he District Court erred in dismissing the Due Process Claim of Plaintiff Soto Based on the Disregard of State Law and Regulations by Defendants Flores, Betancourt and Carrasquillo." (2a) Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint make "a short and plain statement of the claim showing that the pleader is entitled to relief," and that the "defendant [have] fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). This Court has explicitly rejected attempts to impose heightened pleading standards in § 1983 cases. *See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993)(rejecting the application of "heightened pleading standard" in civil rights cases alleging municipal liability under section 1983).

the actions taken by the officers affirmatively subverted the legislatively mandated procedures.

Law 54's mandatory arrest, reporting, filing and confidentiality requirements, § 641 (71a-72a), along with the provisions requiring officers to provide preventive services information, § 640 (70a-71a), specifically delineate the actions officers must take in responding to a domestic violence complaint. For example, Law 54 eliminates the warrant requirement in domestic violence cases, and mandates an arrest where there is probable cause to believe that the abuser violated Law 54. § 638. (69a) Thus, under Law 54, the police are not at liberty to avoid making the required probable cause determination. Further, they must document and record all domestic violence complaints, regardless of the eventual outcome of such complaints. § 641. (71a) In addition to these mandates, the Regulations and other public documents disseminated by Superintendent Betancourt also clearly state that arrest, case reporting and confidentiality procedures are mandatory requirements under Law 54. (89a)

Petitioner urges this Court to grant certiorari to address the issue of the *Roth* entitlement in this case because of the national significance of this matter. A growing number of states have passed domestic violence legislation, including mandatory arrest statutes.[18] Because decisions on procedural due process claims in domestic violence cases are certain to increase, the Court's guidance is needed to avoid continued conflict and uncertainty. Accordingly, the writ should be granted to address this important issue and to allow Soto to present her procedural due process challenge.

Soto's allegations satisfied federal pleading requirements and provided respondents with the requisite notice of her claims.

[18]There are over 30 states with mandatory arrest statutes. *See, e.g.*, LA Rev. Stat. Ann. § 2140; D.C. Code Ann. § 16-1031(a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York
June 11, 1997

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APPENDIX

Table of Contents

Decision of the United States Court of Appeals for the First Circuit, January 13, 1997 . . . . . 1a

Opinion and Order of the United States District Court for the District of Puerto Rico, January 20, 1995 . . . 33a

Opinion and Order of the United States District Court for the District of Puerto Rico, July 3, 1995 . . . . . 50a

United States Constitution, Amendment XIV, Section 1 . . . . . 55a

42 U.S.C. § 1983 . . . . . 55a

1989 P.R. Laws Act No. 54 (Domestic Abuse Prevention and Intervention Act) (P.R. Laws Ann. tit. 8 §§ 601-605) 56a

Rules and Procedures to Attend to Domestic Violence Incidents, Puerto Rico General Order No. 86-26m (rev. 1) (1989) 75a

Relevant Sections of the Women's Affairs Commission Report for 1989 . . . . . 96a

Amended Complaint, June 22, 1993 . . . . . 101a

Declaration of Yolanda Zayas, Executive Director of the Women's Affairs Commission (1988-1993), February 9, 1995 . . . . . 110a

Portions of Translated Deposition of Ismael Betancourt, September 26, 1994 . . . . . 113a

United States Court of Appeals
For the First Circuit

No. 96-1024

FLOR MARIA SOTO,

Plaintiff, Appellant,

v.

CARLOS FLORES, ET AL.

Defendants, Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Hector M. Lafitte, U.S. District Judge]

Before

Torruella, Chief Judge,

Campbell, Senior Circuit Judge,

and Lynch, Circuit Judge.

Jose Enrique Colon Santana, with whom Gary Broida was on brief, for appellant.

Vanessa Ramirez, Assistant Solicitor General, Department of Justice, with whom Carlos Lugo-Fiol, Solicitor General, was on brief for appellees.

January 13, 1997

LYNCH, Circuit Judge. On April 21, 1991, Angel Rodriguez shot to death his two young children and then killed himself. This tragedy occurred four days after Rodriguez's wife, Flor Maria Soto, complained to the police about the physical and emotional abuse she suffered at Rodriguez's hands. The police, knowing Rodriguez had threatened to kill Soto and her family if Soto went to the police to have him jailed for his spousal abuse, nonetheless violated their obligations of confidentiality and informed Rodriguez of Soto's complaints. Having done so, the police did not jail Rodriguez or take steps to protect Soto and her family. Soto's lawsuit alleges that Rodriguez did what he had threatened to do and that the state created this danger. Rather than pursue any claims available to her under Puerto Rican law, Soto chose to bring suit in federal court alleging constitutional tort theories.

Soto brought suit under 42 U.S.C. § 1983, claiming that the actions of the defendants, Carlos Flores, a police officer, and Ismael Betancourt-Lebron, Puerto Rico's superintendent of police, violated her and her children's rights to substantive due process and to equal protection of the laws. The district court granted summary judgment in favor of the defendants. We do not reach the difficult question of whether Soto, in her capacity as a representative of her dead children, has presented a due process claim that would survive summary judgment, because we find that the defendant officers are protected by qualified immunity on that claim. As to the equal protection claim, we adopt a standard for measuring such claims in domestic violence cases.

Testing the evidence against that standard, we find that Soto has not adduced sufficient evidence of discriminatory intent to survive summary judgment. Accordingly, we affirm the district court.

I. Facts

We recite the facts in the light most favorable to the plaintiff, the party opposing summary judgment, Flor Maria Soto married Angel Rodriguez, nicknamed Rafi, in 1981. Rodriguez and Soto had two children; Sally was born in 1983, and Chayanne, a boy, in 1988. Approximately a year into their marriage, Rodriguez began to abuse Soto emotionally and physically. This abuse, often connected to Rodriguez's drinking, continued throughout their marriage. The abuse was apparent to family and friends. As one neighbor put it, "anyone who visited them could tell that [Soto] was an abused wife." Despite his constant mistreatment of Soto, Rodriguez never abused the children.

Rodriguez did gardening and vehicle repair work for the police officers at Palmer Police Station, a sub-station of the Rio Grande Precinct. Rodriguez was friends with several of the officers from Palmer Station, including Luis Carrasquillo-Morales ("Carrasquillo")[1] and defendant Carlos Flores-Moreira ("Flores"). Rodriguez visited the station almost daily. Many of the officers, when on patrol in the area, would visit the Rodriguez-Soto home for coffee or a drink. Flores and Rodriguez were particularly friendly; about once a week, during his patrol rounds, Flores would stop by the house for an hour's visit.

On Wednesday, April 17, 1991, Rodriguez struck Soto about her face and neck, bruising her, and called her

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[1]Carrasquillo was originally named as a defendant in this action, but defaulted in the district court proceedings. In order to have a final judgment from which she could appeal, Soto sought and was granted a voluntary dismissal of her claim against Carrasquillo.

insulting names. When Rodriguez fell drunkenly asleep, Soto gathered the children and went to her mother's house. Soto's mother, Hipolita Vega, convinced her to go to the police and file a complaint. In nine years of beatings, some of them worse than the one on April 17, Soto had never sought help because she believed that the police would do nothing, because she had nowhere to go, and because she was afraid of Rodriguez. Rodriguez had threatened her with a gun on several occasions and told her that he would kill her and other members of her family if she went to the police. Knowing that Rodriguez was friendly with the police, Soto feared that the police would do nothing except tell Rodriguez that she had complained.

On that night, despite her fear, Soto went with her mother and her children to the Palmer Police Station. When she arrived, she was met by Flores, who was the desk officer on duty. Flores could see that Soto was crying and marked with bruises, "pretty ugly hematomas." Soto explained that Rodriguez had beaten her. Flores than radioed for the patrol officers to come in and take her complaint, referring to Soto on the radio as "Rafi's wife" and saying that it was a Law 54 case. During the fifteen to twenty minutes that Soto and Flores waited for the patrol officers to arrive, Flores told Soto that he himself had domestic violence problems, and that his wife wanted him to be put in jail. He urged Soto to patch things up with Rodriguez. Soto responded by telling Flores that Rodriguez's beatings were too much to stand and that, as Flores knew, Rodriguez was a heavy drinker, who became violent when drunk. Soto told Flores about everything that Rodriguez had done and what he would do to her. Flores offered Soto the opportunity to stay overnight at the station.

Sergeant Orta,[2] the supervisor, arrived, and Flores told him that Soto was "the lady with the Law 54 complaint." When the patrol officers, Carrasquillo and Jose Serrano, arrived, Flores said, "This is Rafi's wife," and told them that

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[2]The district court denied a belated motion to add Sergeant Orta as a defendant. No appeal is taken from the denial of that motion.

she was there on a Law 54 complaint. Carrasquillo took Soto into an interview room, three steps away from the desk at which Flores sat. Soto was nervous and crying. The door to the interview room remained open, and Flores listened to everything that was said in Soto's conversation with Carrasquillo.

In the interview room, Soto told Carrasquillo about Rodriguez's behavior, and showed him her bruises. Carrasquillo asked Soto whether she wanted Rodriguez jailed. Soto replied by explaining her situation to the officers. Specifically, she told Carrasquillo that Rodriguez had told her that if she put him in jail, he would get out quickly because his family had money and that he would then kill her. She told Carrasquillo that Rodriguez had told her that if she attempted to put him in jail, he would kill her mother and sisters so that she would go to the wake and he would then kill her there.

Having told the police officers about Rodriguez's threat, Soto asked them to do what was appropriate. Although Soto did not use the words "domestic violence complaint," she believed that by describing her situation to the officers she was initiating the complaint process. Carrasquillo wrote down everything she said during the interview, and Soto assumed that he was drafting a complaint against Rodriguez.

Soto's effort to get police assistance came a year and a half after a new law aimed at curbing domestic violence had gone into effect. In November 1989, the Puerto Rican legislature enacted one of the nation's most comprehensive domestic violence laws, the Domestic Abuse Prevention and Intervention Act, known popularly as "Law 54." In addition to defining criminal domestic violence broadly, Law 54 makes arrest of an abuser mandatory whenever an officer has grounds to believe that Law 54 has been violated. P.R. Laws Ann. tit. 8 §§ 631-635, 638 (Supp. 1995). Police officers are required to take all steps necessary to prevent abuse from recurring, including providing the complainant with

information about social services and, if she expresses concern for her safety, with transportation to a safe place. Id. § 640. Law 54 also requires that police officers file a written report on all domestic violence incidents, whether or not any changes are ever filed. Id. § 641. The police superintendent is charged with establishing "norms to guarantee confidentiality with regard to the identity of the persons involved in incidents of domestic violence." Id. Implementing regulations issued by the superintendent of police detail the officer's responsibilities, and instruct that arrest determinations are not to be affected by irrelevant factors, including victim reluctance. Rules and Procedures to Attend to Domestic Violence Incidents, Puerto Rico Police General Order No. 86-26m (Rev. 1). The regulations explicitly state that police attempts at mediation or reconciliation shall not substitute for arrest. Id. at 4. The regulations require that domestic violence reports be kept confidential, in separate files, and that copies only be issued upon a court order. Id. at 19. These regulations explicitly recognize that:

> Domestic violence . . . frequently ends in intra-family homicide and it affects all the components of the family, including the children.

Id. at 1.

Despite this legal framework, at the conclusion of his interview with Soto, Carrasquillo took no action. Carrasquillo did not tell Soto about the availability of battered women's shelters or about procedures for obtaining an order of protection. Nor did he prepare a domestic violence report. Instead, Carrasquillo wrote up an "Other Services Report," which falsely indicated that Soto had visited the Police solely

for advice relating to child custody.[3] Soto returned to Vega's house.

Carrasquillo discussed Soto's complaint with his supervisor, Sergeant Orta, that evening. When Sergeant Orta signed the Other Services Report he did so despite information that this was a Law 54 situation and that the men under his supervision were not doing what the law required. Sergeant Orta discussed the "Other Services" report with Flores.[4] Flores told him that Rodriguez and Soto had marital problems because Rodriguez was an alcoholic. Flores said he would talk to Rodriguez the next day. Sometime the next day, April 16, Officer Flores, despite knowing of Rodriguez's threats to commit murder if Soto went to the police in an effort to jail him, went to the Rodriguez-Soto home and told Rodriguez about Soto's visit to the police station. That night, Rodriguez arrived at Vega's home very upset. He told Vega and Glorivee Soto, Soto's sister, that "the boys" from the police station had told him that Soto wanted to put him in jail and that he would not allow that to happen. Vega managed to calm him and he left.

The next day, Friday, April 19, Rodriguez ran into the plaintiff at a local tire shop. Rodriguez, visibly upset, told plaintiff that officer Flores had been to their home and had told him that Soto was going to throw him in jail. Soto, fearing violence, denied it. She tried to calm Rodriguez

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[3]Soto contends that she signed a domestic violence report at the station that night and that the Other Services Report produced by the defense is an after-the-fact forgery, and part of a cover-up, which included pressure on Flores to commit perjury. Her claim of forgery is supported by the testimony of a handwriting expert, and Flores' testimony suggests that pressure was put on him.

[4]A police department internal investigation followed the killings. On August 31, 1992, the examiner concluded that Carrasquillo and Sergeant Orta, the supervisor who signed the Other Services Report prepared by Carrasquillo, merited reprimands for failing to act pursuant to the norms established by Law 54. Neither Betancourt-Lebron nor Flores was a subject of that investigation, although Flores was interviewed regarding his knowledge of the events.

down, but Rodriguez kept repeating that Flores had told him she wanted him jailed.

On Saturday, the twentieth of April, Rodriguez again came to Vega's home and invited Soto to the beach. Soto refused to go, but the children, excited at the rare prospect of an outing with their father, got into the car. Rodriguez did not bring the children back that day as he had promised. Soto went twice to try to pick them up, but both times Rodriguez refused to give the children to her.

Finally, at 8:00 p.m. on April 21, Soto, mindful that the next day was a school day, went back to the family home determined to get the children. As she stood on the lawn, Soto heard both children tell Rodriguez that she had arrived. Sally shouted, "Run, Mommy, please run!" Rodriguez then shot his son in the forehead. Soto heard Sally say to her father, "Daddy, no, Daddy, no." Rodriguez then shot Sally through her mouth. Soto heard a third shot. Rodriguez had killed himself. When the police, including Carrasquillo and Serrano, arrived, Rodriguez was dead. The children were still alive and the police rushed them to the hospital. Both children were dead on arrival.

On the wall of the room where Rodriguez shot his children, Rodriguez had written a message which confirmed that Flores had told him of Soto's visit to the police. The message said, among other things, "you left me, and Officer Flores knows it," and "Law 54, which is only a tool for women to make men do whatever they want, is not liberty."

II. Procedural History

Soto's initial section 1983 complaint alleged that the acts and omissions of Officer Flores deprived her of her rights to due process and to equal protection of the laws. Additionally, she alleged that Superintendent Betancourt-Lebron was liable for his failure to properly train and supervise his subordinate officers.

After discovery, Flores and Betancourt-Lebron moved to dismiss, and, in the alternative, for summary judgment. In addition to arguing that Soto's claims lacked merit, the defendants asserted that they were entitled to the protections of qualified immunity. In an opinion dated January 20, 1995, the district court granted the motion for summary judgment. As to the due process claim, the court held that, because an individual may not bring a section 1983 action for deprivation of due process based on injury to a family member, the death of Soto's children did not give rise to a cognizable claim. *Soto* v. *Carrasquillo*, 878 F. Supp. 324, 327 (D.P.R. 1996) (citing *Valdivieso-Ortiz* v. *Burgos*, 807 F.2d 6, 7-10 (Ist Cir. 1986)). As to the equal protection claim, the court held that Soto had failed to adduce enough evidence on discriminatory intent and causation to defeat summary judgment. *Soto*, 878 F. Supp. at 331-32.

Soto requested reconsideration; as part of her motion, she asked for leave to amend her complaint to bring the action as a representative of her children. The district court treated the complaint as amended, but dismissed the claim on behalf of the children, holding it barred by *DeShaney* v. *Winnebago County*, 489 U.S. 189 (1989). The court accordingly denied Soto's motion for reconsideration. Soto appeals.

III. The Section 1983 Claims

Soto presses two distinct claims. First, she alleges that the defendants' actions violated her and her children's rights to due process. Second, Soto asserts that the defendants had a custom or policy of providing less protection to victims of domestic violence than to victims of other assaults, that this was the result of gender discrimination, that this caused her injuries, and that defendants thus violated her right to equal protection. We consider each of these claims in turn.

A claim under section 1983 has two essential elements. First, the challenged conduct must be attributable to a person acting under color of state law (including Puerto Rico law); second, the conduct must have worked a denial of rights secured by the Constitution or by federal law. *Martinez* v. *Colon*, 54 F. 3d 980, 984 (lst Cir), *cert. denied*, 116 S. Ct. 515 (1995). The second element requires the plaintiff to prove not only a deprivation of federal right, but also that the defendant's conduct was a cause in fact of the alleged deprivation. *See Maldonado-Santiago* v. *Velasquez-Garcia*, 821 F.2d 822, 831 (1st Cir. 1987) ("Section 1983 imposes a causation requirement similar to that of ordinary tort law.").

A. The Due Process Claim

Soto claims that the deaths of her children are attributable to the defendants' actions, and that those actions deprived both her and her children of what she terms a substantive due process life interest.[5] We examine separately Soto's individual claim and her claim on behalf of her children.

1. Soto's Individual Claim

The district court held that Soto, in her individual capacity, could not bring a due process claim based on injury to her children. *Soto*, 878 F. Supp. at 327. On appeal, Soto argues both that the district court erred in so holding and that

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[5]Some victims of abuse have brought section 1983 claims alleging that official nonfeasance deprived them of procedural due process. See, e.g., Meador v. Cabinet for Human Resources, 902 F.2d 474, 476-77 (6th Cir.) , cert. denied, 448 U.S. 867 (1990) ; Coffman v. Wilson Police Dep't, 739 F. Supp. 257, 26366 (E.D. Pa. 1990). In these cases, the plaintiffs argued that state law made certain protective processes mandatory, and thus created entitlements subject to due process protection against deprivation. See, e.g. Coffman, 739 F. Supp at 263-64. However, from our reading of the record, Soto does not appear to make a procedural due process claim. Thus, we do not address whether the protective provisions of Law 54 create such an entitlement.

the injury she complains of is not limited to the loss of the companionship of her children, but also comprehends the mental anguish she has suffered personally.

We review the district court's grant of summary judgment *de novo*. *Dominque* v. *Weld*, 73 F.3d 1156, 1158 (1st Cir. 1996). We examine, viewing the record in the light most favorable to the nonmoving party, whether the district court correctly applied the substantive law and whether any disputed facts have the potential to change the outcome of the suit. *See Martinez* v. *Colon*, 54 F.3d 980, 983-84 (1st Cir. 1995).

There is no absolute constitutional right to enjoy the companionship of one's family members free from all encroachments by the state. *See Valdivieso-Ortiz* v. *Burgos*, 807 F.2d 6, 8 (lst Cir. 1986). "State action that affects the parental relationship only incidentally . . . even though the deprivation may be permanent . . . is not sufficient to establish a violation of an identified liberty interest." *Pittsley* v. *Warish*, 927 F.2d 3, 8 (1st Cir.), *cert. denied*, 502 U.S. 879 (1991). Thus, the death of a family member will not ordinarily give those still alive a cognizable due process claim under section 1983. *See Manarite* v. *Springfield*, 957 F.2d 953, 960 (1st Cir.) (child could not sue police for failure to prevent father's suicide), *cert. denied*, 506 U.S. 837 (1992); *Valdivieso-Ortiz*, 807 F.2d at 10 (stepfather and siblings had no cause of action where prison guards beat inmate to death). Here, the defendants' actions, despite the tragic outcome, were not specifically aimed at ending or affecting Soto's relationship with her children. Nor can Soto successfully distinguish her case from the cited precedents of this court by pointing to her own mental anguish. The question is not one of a degree of suffering, but whether the plaintiff can establish a violation of federal right. While Soto's loss was of enormous heartbreaking magnitude, the Constitution does not protect against all harms. She herself was not deprived of a constitutionally protected interest, and she may not bring a section 1983 due process claim on her own behalf.

2. Soto's Claim as a Representative of Her Children

In deciding Soto's motion for reconsideration, the district court granted Soto's request to amend her complaint so as to bring a claim as a representative of her children. The court than found that the children's claim was foreclosed by *DeShaney*, dismissed the claim and denied the motion for reconsideration of the due process claim.

Review of denial of a motion for reconsideration is for abuse of discretion. *See Airline Pilots Ass'n* v. *Precision Valley Aviation, Inc.*, 26 F.3d 220, 227 (1st Cir. 1994). For purposes of this appeal, we consider Soto's complaint, as amended, to determine if the district court committed legal error in holding that Soto, as a representative of her children, failed to state a claim upon which relief could be granted. *See Cooter & Gell* v. *Hartmarx*, 496 U.S. 384, 405 (1990) (district court abuses discretion when it makes error of law); *cf. Glassman* v. *Computervision Corp.*, 90 F.3d 617 (1st Cir. 1996) (in reviewing denial of leave to amend complaint, court considers whether complaint as amended would state cognizable claim).

Defendants argue, and the district court held, that any claim on behalf of Soto's children is barred by *DeShaney*, which held that "a State's failure to protect an individual against violence simply does not constitute a violation of the Due Process Clause." 489 U.S. at 197. We agree that if Soto's argument were simply that Flores and his brother officers failed to protect her children from Rodriguez, it would clearly fail. *See, e.g., Pinder* v. *Johnson*, 54 F.3d 1169 (4th Cir.) (en banc) (rejecting due process claim based upon police failure to protect domestic violence victim), *cert. denied*, 116 S.Ct. 530 (1995); *Balistreri* v. *Pacifica Police Dep't*, 901 F.2d 696 (9th cir. 1990) (same).

However, Soto alleges more than a mere failure to protect. She claims, and her claim has support in the record,

that Officer Flores visited Rodriguez at home and told him that Soto had been to the police station and wished to jail him. She further alleges that when he did so Flores was fully aware of how Rodriguez would likely react to this information, not only because Flores know Rodriguez's character well, but also because Flores know that Rodriguez had threatened to murder her and her family members if she went to the police and attempted to stop his abuse by having him jailed. Soto alleges that Flores misused information that he had obtained in an official capacity, and that this affirmative act rendered her children more vulnerable to the danger posed by Rodriguez and thus led to their deaths.

Soto alleges that Flores' conduct violated a duty of constitutional dimension owed to Soto's children. *DeShaney* clearly establishes that the state does not have a Constitutional duty to protect its citizens from private violence. *DeShaney*, 489 U.S. at 197. However, in *DeShaney*, the Supreme Court also recognized a distinction between the case before it and other cases in which the state created the risk faced by the plaintiff:

> While the State may have been aware of the dangers that [the plaintiff] faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. [By returning the plaintiff child to his abusive father, the State] placed him in no worse position than that in which he would have been had it not acted at all.

Id. at 201. The situation here arises from the state actor's affirmative acts, which played a part in creating the danger to the children and rendered them more vulnerable to harm. Soto thus contends that it falls outside the scope of *DeShaney*, in that it "implicates the alternate framework of § 1983 liability wherein a plaintiff alleges that some conduct by an

officer *directly* caused harm to the plaintiffs."[6] *Pinder*, 54 F.3d at 1176 n.* (emphasis in original), *see also Dwares* v. *City of New York*, 985 F.2d 94, 99 (2d Cir. 1993) ("[T]hough an allegation simply that police officers had failed to act upon reports of past violence would not implicate the victim's rights under the Due Process Clause, an allegation that the officers in some way had assisted in creating or increasing the danger to the victim would indeed implicate those rights.").

Not every negligent, or even willfully reckless, state action that renders a person more vulnerable to danger "take[s] on the added character of [a] violation[] of the federal Constitution." *Monahan* v. *Dorchester Counseling Ctr. Inc.*, 961 F.2d 987, 993 (lst Cir. 1992). In a creation of risk situation, where the ultimate harm is caused by a third party, courts must be careful to distinguish between conventional torts and constitutional violations, as well as between state inaction and action. *See id.*; *Pinder*, 54 F.3d at 1175-78.

The scope of any permissible section 1983 action based on a state-created danger theory is a difficult question. *See*, *e.g.*, *Pinder*, 54 F.3d at 1175; *Monahan*, 961 F.2d at 993-94. Because we find that this claim may be resolved on immunity grounds, we choose not to reach this question.

3. Qualified Immunity.

Assuming arguendo that Soto had stated a claim that Flores and Betancourt-Lebron violated her children's constitutional rights, the issue becomes whether the

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[6]The distinction between duty-to-protect cases and danger creation cases was colorfully described by the Seventh Circuit in Bowers v. De Vito, 686 F.2d 616 (7th Cir. 1982). While holding that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen, Judge Posner pointed out that "[i]f the state puts a man in a position of danger from private persons and then fails to protect him, . . . it is as much an active tortfeasor as if it had thrown him into a snake pit." Id. at 618.

defendants are entitled, as they argue, to qualified immunity from suit. There are two prongs to qualified immunity analysis. *See St. Hilaire* v. *Laconia*, 71 F.3d 20, 24 (lst Cir. 1995). First, the court must determine, as a matter of law, whether the constitutional right in question was clearly established at the time of the alleged violation. *Id.* If the right is clearly established, the court must then ask whether a reasonable similarly situated officer "should have understood that the challenged conduct violated" that right. *Id.*

To begin, Soto's arguments against qualified immunity appear to misconstrue the doctrine. Soto argues, with evidentiary support, that not only did the defendants violate Law 54 and the pertinent regulations, but also that they knew or reasonably should have known that they were violating it. According to Soto, "[n]o good faith defense is possible if the official knew he was violating plaintiff's rights."

The Supreme Court has considered, and rejected, this approach to qualified immunity. *Davis* v. *Scherer*, 468 U.S. 183, 193-95 (1984). In *Davis*, the plaintiff argued that official conduct that contravened a statute or regulation could not be objectively reasonable because officials may reasonably be expected to conform their conduct to legal norms. *Id.* at 193. The Court rejected this approach because it would "disrupt the balance . . . between the interests in vindication of citizens constitutional rights and in public officials' effective performance of their duties." *Id.* at 195. "Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Id.* at 194; *see also Borucki* v. *Ryan*, 827 F.2d 836, 847 n.18 (1st Cir. 1987). Accordingly, Soto's arguments with regard to Law 54, even if her alleged facts are true, do not resolve the qualified immunity question. The focus is rather on whether there is clearly settled law on the constitutional violation at issue.

This inquiry is sharpened by two narrowing principles. The right must be stated with sufficient particularity so that

a "reasonable officer would understand that what he is doing violates that right" and the right must have been "clearly established at the time of the defendants' alleged improper actions, and . . . not . . . through the use of hindsight." *Souza* v. *Pina*, 53 F.3d 423, 425 (lst Cir. 1995) (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 640 (1987)). The issue is thus whether the constitutional duty not to affirmatively abuse governmental power so as to create danger to individuals and render them more vulnerable to harm was clearly established in April 1991, the time of the events giving rise to this suit.

What the Third Circuit termed the "'state-created danger theory,'" *Kneipp*, 95 F.3d at 1201, has been recognized by some federal courts as a viable mechanism for establishing a constitutional claim at least since 1979. *See White* v. *Rochford*, 592 F.2d 381, 383 (7th Cir. 1979) (finding Due Process Clause violation where unjustified and arbitrary refusal of police officers to lend aid to children endangered by the performance of official duty . . . ultimately result[ed] in physical and emotional injury to the children") ; *see also Cornelius* v. *Town of Highland Lake*, 880 F.2d 348 (11th Cir. 1989), *cert. denied*, 494 U.S. 1066 (1990); *Wood* v. *Ostrander*, 879 F.2d 583 (9th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990); *Checki* v. *Webb*, 785 F.2d 534, 538 (5th Cir. 1986). In *DeShaney*, the Supreme Court acknowledged that state actions that create dangers or render private citizens more vulnerable to harm could amount to constitutional violations. *See DeShaney*, 489 U.S. at 201. Since *DeShaney*, seven circuit courts of appeals have recognized that state-created dangers may, in proper circumstances, give rise to constitutional claims under section 1983. *See Kneipp*, 95 F.3d at 1208 (citing cases and tracing history of state-created danger theory).

While this history would appear to militate in favor of finding that there is clearly established law in this area, in 1991 the First Circuit had not yet addressed the issue of state-created dangers. The first case from this court to discuss the contours of that doctrine was *Monahan* v. *Dorchester*

Counseling, Inc., 961 F. 2d 987 (lst Cir. 1992) , and that case held that, on the facts alleged, there was no constitutional violation. Of course, a violation of clearly settled law may be found even where the Supreme Court and the circuit in question have not specifically addressed the question. *See* 2 Nahmod, Civil Rights and Civil Liberties Litigation: The Law of Section 1983, § 8.07, at 134-35 (3d ed. 1991) (citing cases).

However, we cannot extract a clearly established right from a somewhat confusing body of caselaw through the use of hindsight, or "permit claims of qualified immunity to turn on the eventual outcome of a hitherto problematic constitutional analysis." *Martinez-Rodriguez* v. *Colon-Pizarro*, 54 F.3d 980, 989 (lst Cir. 1995). The history of the state--created danger theory, although recently comprehensively described by the Third Circuit in *Kneipp*, is an uneven one. The distinction between affirmatively rendering citizens more vulnerable to harm and simply failing to protect them has been blurred. Moreover, courts have sometimes found that a given action, while rendering the plaintiff more vulnerable to danger, did not amount to a constitutional violation, but instead should be viewed as a state law tort. *See e.g.*, *Cannon* v. *Taylor*, 782 F.2d 947, 950 (11th Cir. 1986). It is more recent judicial opinions that have begun to clarify the contours of this doctrine. *See, e.g., Kneipp*, 95 F.3d at 1208-10; *Pinder*, 54 F.3d at 1174-1177.

We conclude therefore that, in 1991, "the contours of the right were [not] sufficiently plain that a reasonably prudent state actor would have realized not merely that his conduct might be wrong, but that it violated a particular constitutional right." *Martinez-Rodriguez*, 53 F.3d at 988. Accordingly, we find that the defendants are entitled to the protections of qualified immunity, and affirm the district court's grant of summary judgment on plaintiff's substantive due process claim.

B. The Equal Protection Claim

In *DeShaney*, the Supreme Court acknowledged that "[the State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause." 489 U.S. at 197 n.3.

Soto alleges an equal protection violation in her assertion that "[d]efendants have a custom, policy and practice of treating complaints from, or on behalf of, women threatened with violence in domestic disputes differently from other complaints of violence. Defendants have discriminated on the basis of the sex of the complaining victim." The district court measured Soto's equal protection claim[7] under the standard for such claims brought by domestic violence victims that was first articulated by the Tenth Circuit in *Watson* v. *City of Kansas City*, 857 F.2d 690 (10th Cir. 1988), and subsequently adopted by several other circuits. Under the *Watson* standard, a plaintiff seeking to defeat a motion for summary judgment must:

> proffer sufficient evidence that would allow a reasonable jury to infer that it is the policy or custom of the police to provide less protection to victims of domestic violence than to other victims of violence, that discrimination against women was a motivating factor, and that the plaintiff was injured by the policy or custom.

Ricketts v. *City of Columbia*, 36 F.3d 775, 779 (8th Cir. 1994) (citing *Watson*, 857 F.2d at 694), *cert. denied*, 115 S. Ct. 1839 (1995).

The district court found that Soto had adduced sufficient evidence to create a genuine issue as to whether the police force had a custom or policy of providing less protection to victims of domestic violence than to other

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[7]The district court correctly found that Valdivieso-Ortiz's bar on section 1983 actions for due process violations based on the death of a family member has not been extended to equal protection claims. Soto, 878 F. Supp. at 328 n.6.

assault victims. *Soto*, 878 F. Supp. at 329. We agree. The court also found that plaintiff had failed to meet her burden in opposing summary judgment[8] on either the discriminatory intent prong or the causation prong of the *Watson* standard. *Id.* at 332.

In a matter of first impression for this court, we adopt the *Watson* standard for section 1983 equal protection claims brought by domestic violence victims. Several other circuits have considered similar claims. These tragedies follow a sadly similar pattern; an abuse victim, after repeatedly seeking police protection from her abuser, is gravely injured or killed. The victim, or her next of kin, claims under section 1983 that law enforcement policies provide lesser protection to victims of domestic violence and discriminate on the basis of gender. *See, e.g.*, *Navarro* v. *Block*, 72 F.3d 712 (9th Cir. 1996); *Eagleston* v. *Guido*, 41 F.3d 865 (2d Cir. 1994), *cert. denied*, 116 S. Ct. 53 (1995); *Ricketts*, 36 F.3d at 775; *Brown* v. *Grabowski*, 922 F.2d 1097 (3d Cir. 1990), *cert. denied*, 501 U.S. 1218 (1991); *McKee* v. *City of Rockwall*, 877 F.2d 409 (5th Cir. 1989), *cert. denied*, 493 U.S. 1023 (1990); *Watson*, 857 F.2d at 690.

Under the standard we adopt today, Soto must show that there is a policy or custom of providing less protection to victims of domestic violence than to victims of other crimes, that gender discrimination is a motivating factor, and that Soto was injured by the practice. *See Watson*, 857 F.2d at 694. Soto has adduced evidence sufficient to create an issue as to whether there was a custom or policy of providing less protection to domestic violence victims. Closer questions are whether Soto adduces evidence sufficient to permit the drawing of the necessary inference of an intent to

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[8]It was part of Soto's prima facie case to proffer sufficient evidence of discriminatory intent. See, e.g., Lipsett, 864 F.2d at 896. In opposing summary judgment, it was Soto's burden to adduce sufficient evidence of that intent to create a trialworthy issue. See National Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 743-44 (1st Cir.), cert. denied, 115 S. Ct. 2247 (1995).

discriminate against women and whether Soto provides sufficient evidence that her injuries were caused by the alleged custom or policy.

Soto's argument may be summarized as follows: (1) that the Preamble to Law 54 explicitly recognizes that "women are usually the victims of . . . conjugal abuse" and that Law 54 expresses a legislative intent to protect women and children from domestic violence;[9] (2) that, although 95% of domestic violence complaints involve females as victims and males as perpetrators, one out of every four persons in jail in Puerto Rico for domestic violence is female;[10] (3) that statements of the individual in charge of the police in Puerto Rico, Betancourt-Lebron, demonstrate both that Law 54 is not enforced as are other laws and that his disagreement with the law, which may reasonably be understood to be gender motivated, has led to nonenforcement by subordinate officers; (4) that there was no police training on domestic violence prior to the events at issue; (5) that statements by Sergeant Orta, and Officers Flores and Carrasquillo acknowledge that police officers in the Rio Grande precinct in 1991 did not enforce Law 54; (6) that statements by individual officers demonstrate gender bias and stereotyping, indicating that the Law was not enforced for discriminatory reasons; (7) that the non-discriminatory reasons offered for the non-enforcement are pretextual; (8) that differential enforcement of Law 54 therefore permits an inference of an intent to discriminate; and (9) that her injuries

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[9]Law 54 has been noted in academic literature for "its ambitious and comprehensive approach to domestic violence." See Rivera, Puerto Rico's Domestic Violence Prevention and Intervention Law and the United States Violence Against Women Act of 1994: The Limitations of Legislative Responses, 5 Colum. J. Gender & L. 78, 80 (1995). Rivera also describes how official resistance to Law 54 has been an impediment to implementation. Id. at 94-95.

[10]While Soto admits that she presented no evidence of arrest rates for men charged with domestic violence as compared to arrest rates for women charged with domestic violence, she asserts that such comparisons are impossible because Puerto Rico has chosen not to gather this data.

were caused by the non-enforcement of the domestic violence law.

Defendants argue that no intent to discriminate can be inferred from mere non-enforcement of a law. It is a truism that under current Equal Protection Clause jurisprudence, a showing of disproportionate impact alone is not enough to establish a constitutional violation.[11] *See Washington* v. *Davis*, 426 U.S. 229, 242 (1976). While "impact provides an important starting point" for a court seeking to determine if the adverse effect reflects invidious gender-based discrimination, "purposeful discrimination is 'the condition that offends the Constitution.'" *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 274 (1979) (citation omitted) (upholding a veteran's preference in civil service hiring where 98% of Veterans were male). "[T]he mere existence of disparate treatment -- even widely disparate treatment -- does not furnish adequate basis for an inference that the discrimination was [impermissibly] motivated." *Dartmouth Review* v. *Dartmouth College*, 899 F. 2d 13, 19 (1989) ; *see* Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 Yale L.J. 2117, 2190-94 (1996) (modern doctrines of equal protection have encouraged the development of facially neutral policies that are difficult to challenge on constitutional grounds).

A domestic violence victim seeking to prove an equal protection violation must thus show that the relevant policymakers and actors were motivated, at least in part, by a discriminatory purpose. *Feeney*, 442 U.S. at 274. The Supreme Court has defined discriminatory purpose as being:

> more than intent as volition or intent as awareness of consequences... It implies that the decisionmaker. . .

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[11] "The Court's refusal to treat selective indifference as an equal protection violation suggests a preference for a stingy process theory over one that invites surreptitious introduction of impact analysis." Klarran, An Interpretive History of Modern Equal Protection, 90 Mich. L. Rev. 213, 299 (1991).

> selected or reaffirmed a course of action at least in part "because of," not merely "in spite of" its adverse effects upon an identifiable group.

Id. at 279.

Without the smoking gun of an overtly discriminatory statement by a decisionmaker, it may be very difficult to offer sufficient proof of such a purpose."[12] *See, e.g., Eagleston*, 41 F.3d at 878 (statistics showing that domestic violence complaints were less likely to result in arrest than were stranger assault complaints and evidence of underenforcement of official domestic violence policy did not constitute evidence of discriminatory intent,or purpose); *Ricketts*, 36 F.3d at 781 (although over 90% of victims of domestic abuse are women, and police statements offered support for discriminatory intent toward domestic disputes, plaintiff presented no evidence of intent to discriminate against women). It is true, as Soto points out, that some courts have allowed the equal protection claims of domestic violence victims to proceed on an arguably lesser showing. *See Balistreri*, 901 F.2d at 701 (remark of officer that plaintiff's husband was entitled to hit her because she was "carrying on" suggested an animus against women sufficient to allow plaintiff's complaint to survive motion to dismiss); *Thurman* v. *City of Torrington*, 595 F. Supp. 1521, 1528-29 (D. Conn. 1984) (viewing equal protection claim of domestic violence victim in terms of "increasingly outdated misconception" of husband's prerogative to discipline his wife) (internal quotation marks and citation omitted)). However, we think that the stringent standards imposed by the majority of circuit courts are more in keeping with the Supreme Court's approach to equal protection challenges to

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[12]As the Third Circuit has recognized in the Title VII context, it is rare that discrimination wears its garb openly and it more often comes "masked in subtle forms." Triers of fact may recognize those more subtle forms for what they are and coded comments may raise inferences of discrimination, Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1082 (3d Cir. 1996).

facially neutral policies. It is in this light that we evaluate Soto's equal protection claim.

This is not the usual case in which plaintiffs seek to prove discriminatory intent from the mere fact of differential impact. Nor is this the more common case where a plaintiff in a civil rights action seeks to use the courts to upset the majoritarian preferences expressed through the legislative process. Rather, plaintiff here seeks the benefit of the protection afforded by that majoritarian legislative process and argues that she has been deprived of that protection by the actions of individual public officials motivated by a contrary, gender-discriminatory intent.

The statutory language of Law 54, and the legislative intent evident from its preamble, serve to differentiate this case from the typical disparate impact case. The Law's prefatory "Statement of Motives" states that:

> Although men as well as women may be victims of conjugal abuse, studies show that women are usually the victims of the aggressive and violent conduct that we call conjugal abuse. The investigators figure that 60% of all married women in Puerto Rico are victims of conjugal abuse.

Statement of Motives, Domestic Abuse Prevention and Intervention Act, Act No. 54 (Aug. 15, 1989) (citation omitted). This recognition that the problem of domestic violence impacts women most heavily is reiterated in the text of Law 54 itself:

> In developing the public policy on this matter, we must give attention to the handling of the difficulties that domestic abuse presents, <u>especially for women and children</u>.

P.R. Laws ann. tit. 8, § 601(Supp. 1995) (emphasis added). Law 54 also explicitly recognizes that discrimination has impeded institutional responses to domestic violence:

> Domestic abuse is one of the most critical manifestations of the effect of inequities in the relationships between men and women. The discriminatory ideas, attitudes, and conduct also permeate social institutions called upon to resolve and prevent the problem of domestic abuse and its consequences. The efforts of these institutions to identify, understand and handle abuse have been limited, and often inadequate.

Id. (emphasis added).

In the more usual equal protection case, a plaintiff will present evidence of disparate impact upon a disfavored group in an attempt to provide an "important starting point" for proof of discriminatory intent. *See, e.g., Feeney*, 442 U.S. at 274. Here, the Statement of Motives of Law 54 contains an explicit legislative finding that domestic violence has a greater impact on women and the Law expresses an intent to ameliorate that impact. This legislative finding is evidence that underenforcement of Law 54 would indeed have a greater impact on women and might therefore he motivated by gender discrimination.

Moreover, the express legislative desire to assist women victims of domestic violence and recognition of the problem of discrimination within responsible institutions are important factors to be considered in the "give and take" of the situation. *See Feeney*, 442 U.S. at 279 n.24 (discriminatory intent is often "made clear from what has been called . . . " the give and take of the situation'") (citation omitted). The Supreme Court has said that the discriminatory intent inquiry should look not only at the different impact a policy has on a disfavored group, but also at the history behind the development of a policy, including looking at the problems it was intended to address. *See Arlington Heights*, 429 U.S. at 266-68.

To the extent that decisions such as *Feeney* and *Arlington Heights* are rooted in an appropriate judicial deference to democratic processes and rational legislative preferences, the rationale of deference is less compelling here. *See, e.g., Feeney*, 442 U.S. at 271 ("The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility. . . [I]t is presumed that even improvident decisions will eventually be rectified by the democratic process. . . .'" (citations omitted)); *Arlington Heights*, 429 U. S. at 265 ("[I]t is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality."). With Law 54, the legislature of Puerto Rico has expressed, through the democratic process, an intent to protect the female victims of domestic violence and has noted that enforcement agencies have been discriminatory and part of the problem. Thus, underenforcement of Law 54 by those charged with administering the law may in fact be a subversion of majoritarian processes for individual, illegitimate motives. We believe, in this context, that action by officials leading to non-enforcement of Law 54 may be some evidence of discriminatory intent by those individuals. The policy Soto challenges is, of course, not Law 54, but the decision not to implement the Law when she sought its protections. In determining what, if anything, motivated that decision, the factfinder may consider the purposes of the Law itself, and draw appropriate inferences about what might motivate a decision not to effectuate those purposes. As the Law expressly seeks to aid women victims and eradicate institutional discriminatory attitudes, a decision not to implement the Law may well leave been motivated not "in spite of," but "because of" the resulting impact on women. We review the record to see whether there is, sufficient evidence of intent as to each of named defendants.

1. The Rio Grande Precinct

In reviewing whether the failure to enforce Law 54 was motivated by discriminatory intent, we look first to the actions of the officers in the Rio Grande precinct. The key actor at the precinct level was Sergeant Orta. Orta was told Soto was making a Law 54 complaint, yet he signed an Other Services Report in violation of Law 54 and took no steps to have Rodriguez arrested. Nor did he take any steps to remove Soto and her children from harm's way. He knew that Flores was going to talk to Rodriguez and did not try to stop him. He thus ratified and condoned the officers' disregard of Law 54.

Orta's statements, as described below, suggest a discriminatory attitude towards women; this attitude may have been one of the reasons behind the lack of enforcement of Law 54 at the Palmer substation of the Rio Grande precinct. Sergeant Orta made statements which a trier of fact could easily find reveal gender-discriminatory stereo types and biases. He testified as follows:

Q: What is your opinion of Law 54?

A: I told you the first time, and I remit myself to the record, that I am in total disagreement with that Act. I believe that it is very unjust related to aggressions against women and I do not agree with that.

Q: Why do you believe it is very unjust with relation to aggressions against women?

A: Sometimes, men, including myself of course, but sometimes one drinks on the outside or has a woman on the side or a friend on the side, and one has an argument with one's lady friend and goes home and takes it out on the wife. And I believe that is not just.

. . .

> Q: Then I ask you, again, what is your opinion with relation to the law?
>
> A: Well, the thing is that the law, in spite of it mentioning both parties as being able to complain, the woman is always the person who is injured. Credibility is given to the woman, where there are occasions when that doesn't happen that way.

The weight to be given to Sergeant Orta's comments depends upon many factors. *See National Amusements*, 43 F.3d at 743 (ambiguous comments standing alone are insufficient to raise an inference of racial animus). The defendants here have not offered a plausible alternative interpretation for comments which in context suggest discrimination. *See, Alexis* v. *McDonald's Restaurants, Inc.*, 67 F.3d 341, 348 (1st Cir. 1995) (" [A] rational factfinder would be hard-pressed to glean a more plausible inference [than discriminatory intent], particularly since [defendant] has tendered no alternative interpretation supported by the present record."). The comments were made by a person whose actions allegedly contributed to the plaintiff's injury.

Sergeant Orta's statements are very troubling. His hostility to enforcing the domestic violence law could certainly be understood as arising from archaic stereotypes which assume that men enjoy certain prerogatives towards women, including beating them.[13] Gender-based classifica-

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[13]"The Anglo-American common law originally provided that a husband, as master of his household, could subject his wife to corporal punishment or chastisement, so long as he did not inflict permanent injury upon her." Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 Yale L.J. at 2118. This "right" of chastisement was recognized by Blackstone's Commentaries in the eighteenth century. 1 William Blackstone, Commentaries *444. A wife could turn to a court for protection through a writ of supplicavit. Id. The doctrine of chastisement was met with some disfavor and was not universally accepted in American legal culture. See Tapping Reeve, The Law of

(continued...)

tions may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women." *United States* v. *Virginia*, 116 S. Ct. at 2275 (citation omitted). Although Sergeant Orta is not a defendant here, he was a supervisor and his attitudes are evidence of whether the failure to enforce Law 54 at the precinct level was based on discrimination.

Law 54 was enforced sporadically, at best, in the precinct in 1991. Officer Flores testified that almost everyone in his police detachment "shied away from" Law 54 complaints. Asked what happened to the victims when the officers did not want to take complaints, Flores responded, "Well, they had to continue complaining." Flores testified that proper Law 54 procedures were followed only about 75% of the time, and then just by certain officers. Sergeant Orta, Flores's direct supervisor, stated that, despite Law 54, domestic violence complaints were not given great importance in 1991 and were commonly handled in the station as "Other Services" reports. There would certainly be enough facts to raise a reasonable inference that the failure to enforce Law 54 at the precinct level was based on gender discrimination.

That, however, does not answer the question as to whether Officer Flores, who is the defendant here, acted out of gender-based discriminatory intent in talking to Rodriguez. It was not within Flores's responsibilities to take Soto's complaint or to arrest Rodriguez. We find no evidence to suggest that Flores's motivation in talking to Rodriguez was

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[13](...continued)
Baron and Femme; of Guardian and Child; of Master and Servant; and of the Power of Courts of Chancery 65 (New Haven, Oliver Steele 1816); Siegel, supra, at 2124.

By the late nineteenth century, around the time of the enactment of the Equal Protection Clause, the doctrine of the right of chastisement had fallen into disrepute in America. The Supreme Judicial Court of Massachusetts expressly repudiated the doctrine in 1871. Commonwealth v. McAfee, 108 Mass. 458 (1871). Alabama repudiated the doctrine that same year. Fulgham v. State, 46 Ala. 143 (1871).

based on gender discrimination. There is no evidence that Flores himself attempted to avoid enforcement of Law 54 at all, much less for discriminatory reasons. Flores, despite the lack of official training, undertook to get some training for himself. When Soto came to the Palmer substation, Flores called in the two patrol officers, whose responsibility it was to take the complaint and act on it. Flores described Soto's Complaint as a Law 54 complaint to the patrol officers, as he did to Sergeant Orta. There is no evidence that Flores intervened and talked to Rodriguez because of a gender-discriminatory motive; rather, the relationship between the two men provides a strong inference that Flores believed his friendship could provide a basis to resolve the matter. Sadly, he was wrong. That he was wrong does not turn his action into one motivated by gender discrimination.

2. Police Superintendent Betancourt-Lebron

Plaintiff asserts that Betancourt-Lebron, the superintendent of police for the Commonwealth of Puerto Rico, should be held responsible because he failed to provide adequate training, and because that failure was due to gender-discriminatory bias.[14] This claim is based largely on Betancourt-Lebron's public Statements. For example, when Law 54 had been in effect for eight months, Betancourt-Lebron, was quoted in the press as saying:

> I don't believe that [Law 54] is solving anything because it has not lessened the fights between husbands and wives. On the con-

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[14]We will assume arguendo, but do not decide, that there was evidence of a causal link between lack of training and the events at the precinct. The street level officers -- Flores and Carrasquillo -- both testified that they had not received formal training on Law 54, and were not even given a copy of the law. Both officers were left with understandings of the law that were flatly wrong. Both erroneously believed that the victim had to specifically request a Law 54 order, and that the victim had to sign a closed report if she did not wish to proceed to get a restraining order. Sergeant Orta also testified that he did not receive comprehensive training in Law 54 until 1993, two years after the incident at issue here.

> trary, there is evidence that it continues to increase.

He went on to say that domestic violence should not be treated with laws that punish the aggressors, but with psychologists and social workers. This statement of disagreement with the law's decision to criminalize such conduct is not, in itself, a statement of discriminatory intent. Plaintiff posits that the statement in context should be read as discriminatory.

Soto's expert witness, Mercedes Rodriguez, opined that, because one of the most dramatic changes achieved by Law 54 was the criminalization of domestic violence, this statement by Betancourt-Lebron was "one of the most severe blows, that a public official of [his] stature" could give to the law. Rodriguez called these statements a deviation on the part of the institutional leadership. It was the position of the Women's Affairs Commission that Betancourt's public statements "would promote rank and file's negative attitudes toward women victims and their rights under Law 54." The Superintendent's public statements, in opposition to a law he was charged with enforcing, were widely disseminated. It is reasonable to infer, as Soto's expert and the Women's Affairs Commission suggest, that they influenced many of the rank and file in the police. But that the statements had influence does not mean that they were motivated by discrimination.

Additionally, Betancourt-Lebron acknowledged that he foresaw that police officers would have problems implementing Law 54 because its procedures differed from other laws, and because "of active resistance from some members of the Force toward the law. There is no evidence, however, that he was aware of discriminatory attitudes at the Rio Grande precinct, much less that, in the face of such knowledge, he failed to act to curb those attitudes. Nor is there any comparative evidence as to what, if any, training Betancourt-Lebron implemented when other new laws went into effect. Evidence that Law 54, which was specifically intended to assist abused women, was handled differently than other new major law enforcement initiatives could,

perhaps, support an inference of discriminatory intent. But the record is devoid of such evidence.

Somewhat more probative of Betancourt-Lebron's intent is his relationship with the Women's Affairs Commission. Betancourt-Lebron declined to meet, for a year after approval of Law 54, with the Women's Affairs Commission. Law 54 directs the Commission to evaluate implementation of the law and to promote the response of law enforcement agencies to victims. *See* P.R. Laws ann. tit. 8, § 651 (Supp. 1995). The initial report of the Commission, covering the first year of implementation, noted: "Coordination with the Police of Puerto Rico to train personnel as to domestic violence problems and Law 54 has been virtually impossible." In fact, Betancourt-Lebron returned none of the numerous phone calls or letters to him from the Executive Director of the commission, who was concerned about the Police Department's apparent lack of interest in implementing the law.

In the end, this evidence, while painting an unwholesome picture, is not enough to meet the strict standards imposed by the Supreme Court for showing discriminatory intent in equal protection claims. As *Feeney* says, the intent to be shown must be more than an "awareness of consequences." *Feeney*, 442 U.S. at 279. The defendant must have "selected . . . a course of action at least in part 'because of' not merely in spite of its adverse effects on an identifiable group." *Id.* An expression of disagreement with Law 54 and a failure to meet with the Women's Affairs Commission, while some evidence of discriminatory intent on the part of Betancourt-Lebron, is too slender a stalk on which to rest.

Thus, we conclude that plaintiff has fallen short of her difficult burden of proving discriminatory intent against these defendants as required to establish a constitutional tort. In so saying, we do not of course condone the actions and failures of duties we have described. The deaths of children, which may have followed from risks arguably created by the actions

of public officials, are very serious matters. Whether this deplorable scenario is actionable under Puerto Rican law we leave, as we must, to others.

Accordingly, the grant of summary judgment against plaintiff is affirmed.

TORRUELLA, Chief Judge (concurring). I concur with the majority's opinion. I am of the view that the District Court should be affirmed for substantially the same reasons and grounds as are stated in the opinion of the District Court.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

- - - - - - - - - - - - - - - - -

FLOR MARIA SOTO,

Plaintiff,

-against-

LUIS CARRASQUILLO, et al.,

Defendants.

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Civil No. 93-1594 (HL)

OPINION AND ORDER

Before the Court is a motion for Summary Judgment[1] by Defendants Ismael Betancourt y Lebrón ("Betancourt") and Carlos Flores ("Flores") in this action for damages pursuant to section 1983.[2] At the time of the tragic incidents which give rise to this action, Betancourt was the Police Superintendent of Puerto Rico and Flores, a police officer, was working at the Rio Grande precinct. Plaintiff is Flor Maria Soto ("Soto").

On April 17, 1991, Soto went to the Rio Grande police station, claiming to have been physically abused by her husband, Angel Rafael Rodriguez ("Rodriguez"). She was attended to by Flores and officer Luis Carrasquillo

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1 Defendants' motion is entitled "Motion to Dismiss and/or for Summary Judgment." The Court makes its ruling in this opinion and order only on the motion for summary judgment.

2 42 U.S.C. § 1983.

("Carrasquillo"). Carrasquillo is also a defendant in this action but is not a party to this motion for summary Judgment. The attending officers did not arrest Rodriguez. Soto alleges that she subsequently went with her two children, aged two and eight, to stay at her mother's house; that on April 19, 1991, Rodriguez appeared at the home of Soto's mother to ask Soto not to imprison him, but she denied that she intended to do so; and that Rodriguez then took the couple's two children with him for the weekend. On April 21, 1991, Soto went to Rodriguez' home to pick up her children and while she was waiting at the front of the house, she heard three gunshots. Rodriguez had shot and killed the two children and then killed himself. Soto alleges that the following two messages were written on the walls of the room where the shootings occurred: "Officer Flores told me that you were going to put me in jail," and "Law 54 only serves to allow women to blackmail men."

Soto alleges that Defendants' actions violated her due process and equal protection rights under the Fifth and Fourteenth Amendments to the Constitution. Specifically, Soto claims that Flores and Betancourt have a custom or policy of treating female victims of domestic violence differently from other victims of violence, thereby discriminating on the basis of gender (Count I); that Flores and Carrasquillo displayed intentional indifference and a reckless disregard to their law enforcement duties, thereby violating Soto's equal protection and substantive due process rights (Count I); that Defendants improperly prepared and altered their report on Soto's visit on April 17, 1991, to the Rio Grande station as part of a conspiracy to deprive Soto of her rights to equal protection (Count II); and that Betancourt deprived Soto of her Fifth and Fourteenth Amendment rights by his failure to instruct, supervise, and discipline police officers with regard to Law

54[3], Puerto Rico's domestic violence prevention act (Count IV).[4]

In their motion for summary judgment, Betancourt and Flores argue that their conduct did not demonstrate a callous or reckless disregard for Soto's constitutional rights and did not cause Soto's injuries. Soto has opposed the motion for summary judgment. For the reasons set forth below, the Court grants Betancourt and Flores' motion for summary judgment.

DISCUSSION

A. Due Process Claim

At the outset, the Court notes that summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once the moving party has satisfied this requirement, the nonmoving party has the burden of presenting any facts that demonstrate a genuine issue for trial, Fed. R. Civ. P. 56(e); *LeBlanc v. Great American Ins. Co.*, 6 F.3d 836, 841 (1st Cir. 1993). An issue is genuine when, based on the evidence, a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106

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[3]P.R. Laws Ann. tit. 8, §§ 601 - 664 (Supp. 1991).

[4]Soto also alleges in Count III of the complaint that certain unnamed supervisors failed to ensure that Flores and Carrasquillo complied with the procedures of Law 54. In Count V she alleges that Defendants' conduct constituted negligence and she is therefore entitled to relief under Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 5141 (1991).

S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252, 106 S.Ct. at 2512.

The initial inquiry in determining whether liability exists under section 1983 has two prongs: "(1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986); *Voutour v. Vitale*, 761 F.2d 812, 819 (1st Cir. 1985). In the case before the Court, this first prong is met. The conduct in question was committed by Defendants in their official capacity as members of the police department. The second prong has two distinct elements. First, there must have been a violation of rights secured by the Constitution or laws of the United States. *Voutour*, 761 F.2d at 819. Second, the defendants' conduct must have caused this deprivation of rights. *Id.*

In the case before the Court, Soto claims that her due process rights were violated as a result of Defendants' behavior. The specific injury of which Soto complains is the death of her two children. She claims Defendants' alleged inaction permitted Rodriguez to kill her children. The Court notes, however, that an individual does not have a cause of action under section 1983 for a due process violation based on the injury or death of a family member. *See Valdivieso Ortiz v. Burgos*, 807 F.2d 6, 7-10 (1st Cir. 1986). A parent does not have a cause of action even though the family member's loss is a shocking one such as an unlawful killing. *Pittelev v. Warish*, 927 F.2d 3, 8 (1st Cir. 1991); *Carmona Pacheco v. Betancourt y Lebrón*, 820 F. Supp. 45, 46 (D.P.R. 1993).

Only the person towards whom the state action was directed, and not those individuals incidentally affected, may bring a section 1983 action for a violation of due process rights. *Manarite v. City of Springfield*, 957 F.2d 953, 960 (1st Cir. 1992); *Pittsley*, 927 F.2d at 8; *Hegarty v. Somerset County*, 848 F.Supp. 257, 268 (D.Me. 1994): *Natriello v. Flynn*, 837 F.Supp. 17, 19 (D.Mass. 1993); *Martinez Correa v. Lopez Feliciano*, 759 F.Supp. 947, 958 (D.P.R. 1991).

Soto is bringing this action individually and not in a representative capacity with respect to her deceased children. The harm for which Soto complains is the killing of her children. Because the action was directed towards them, their representative might be able to bring an action on their behalf for a violation of their due process rights.[5] For the actions complained of in her complaint, however, Soto may not bring a valid claim for a violation of her due process rights. Accordingly, the Court hereby dismisses Soto's claim for a violation of her due process rights.

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[5]Based on the record currently before the Court, it does not appear that the representative of Soto's children would be able to bring a successful cause of action for a violation of their due process rights. As mentioned above, the state action at issue is an alleged failure by the Puerto Rico police to provide protection from Rodriguez. "[A] State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." DeShaney v. Winnebago County D.S.S., 489 U.S. 189, 197, 109 S.Ct. 998, 1004, 103 L.Ed.2d 249 (1989). There is a constitutional duty to protect an individual from private violence when the state has taken the individual into its custody and is holding him there against his will. Id. at 199-200, 109 S.Ct. at 1005; Monahan v. Dorchester Counseling Center, Inc., 961 F.2d 987, 992 (1st Cir. 1992). In this case, Soto's children were not taken into custody by the State and held against their will. Therefore, it does not appear that a claim on behalf of Soto's children for Defendants' alleged failure to protect them would constitute a violation of the Due Process Clause. Accordingly, the Court will not grant Soto leave to amend the complaint to bring a cause of action on behalf of her children.

D. Equal Protection Claim

Soto also alleges that as a result of Defendants' actions she suffered a violation of her federally protected right to equal protection.[6] She claims that Defendants have a policy of treating female victims of domestic violence differently from other victims of violence and that they discriminated against her on the basis of gender. It is a violation of the Equal Protection Clause for a state to selectively deny protective services to a disfavored minority. *DeShaney v. Winnebago County D.S.S.*, 489 U.S. 189, 197 n.3, 109 S.Ct. 998, 1004 n.3, 103 L.Ed.2d 249 (1989); *Ricketts v. City of Columbia, Missouri*, 36 F.3d 775, 779 (8th Cir. 1994). Moreover, while there is no constitutional right to police protection, a state may not discriminate in providing this protection. *Watson v. City of Kansas City, Kan.*, 857 F.2d 690, 695 (10th Cir. 1988); *Cellini v. City of Sterling Heights*, 856 F.Supp. 1215, 1220 (E.D.Mich. 1994); *Thurman v. City of Torrington*, 595 F.Supp. 1521, 1527 (D.Conn. 1984).

This Court is unaware of any First Circuit cases in which a domestic violence victim has brought a section 1983 action alleging a violation of equal protection. In other courts, however, a growing number of plaintiffs have turned to section 1983 claims to allege an equal protection violation for a police department's failure to provide protection from

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[6]In her equal protection claim, Soto's injury is the death of her children. This is the same injury alleged in her claim for a due process violation. As discussed in part A. above, the First Circuit has held in Valdivieso Ortiz and its progeny that an individual does not have a cause of action under section 1983 for a due process violation based on the injury or death of a family member. This Court is unaware, however, of any First Circuit case extending this rule to an equal protection claim. Accordingly, the Court proceeds to the analysis below of Soto's equal protection claim.

domestic violence.[7] Among these cases, the Third, Eighth, and Tenth Circuits have used the following standard in ruling on a motion for summary judgment:

> In order to survive summary judgment, a plaintiff must proffer sufficient evidence that would allow a reasonable jury to infer that it is the policy or custom of the police to provide less protection to victims of domestic violence than to other victims of violence, that discrimination against women was a motivating factor, and that the plaintiff was injured by the policy or custom.

Ricketts, 36 F.3d at 779 (quoting *Hynson* v, *City of Chester Legal Dept.* 864 F.2d 1026, 1031 (3rd Cir. 1988)); *Brown* v. *Grabowski*, 922 F.2d 1097, 1117 (3rd Cir. 1990) (quoting *Hynson*, 864 F.2d at 1031); *Watson*, 857 F.2d at 694; *see also Eagleston* v. *Guido*, 41 F.3d 865, 1994 WL 694150, at *13 (2nd Cir. Dec. 7, 1994) (Applying this same standard in determining whether a directed verdict was appropriate); *Pinder* v. *Commissioners of Cambridge*, 821 F.Supp. 376, 384 n.1 (D. Md. 1993); *Hynson* v. *City of Chester*, 731 F. Supp. 1236, 1240 (E.D. Pa. 1990) (quoting *Hynson*, 864 F.2d at 1031). This standard sets forth the two basic elements that a plaintiff must prove in making out a claim

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[7]See, e.g., Eagleston v. Guido, ___ F.3d ___ , 1994 WL 694150 (2nd Cir. Dec. 7, 1994); Ricketts, 36 F.3d 775; Brown v. Grabowski, 922 F.2d 1097 (3rd Cir. 1990); Balistreri v. Pacifica Police Dept., 901 F.2d 696 (9th Cir. 1990); McKee v. City of Rockwall, Tex., 877 F.2d 409 (5th Cir. 1989); Hynson v. City of Chester Legal Dept., 864 F.2d 1026 (3rd Cir. 1988); Watson, 857 F.2d 690; Smith v. City of Elyria, 857 F. Supp. 1203 (N.D. Ohio 1994); Cellini, 856 F. Supp. 1215; Pinder v. Commissioners of Cambridge, 821 F. Supp. 376 (D. Md. 1993); Coffman v. Wilson Police Dept., 739 F. Supp. 257 (E.D. Pa. 1990); Howell v. City of Catoosa, 729 F. Supp. 1308 (N.D. Okla. 1990); Dudosh v. City of Allentown, 722 F. Supp. 1233 (E.D. Pa. 1989); Bartalone v. County of Berrien, 643 F. Supp. 574 (W.D. Mich. 1986); Thurman, 595 F. Supp. 1521; see also James T.R. Jones, Battered Spouses' Section 1983 Damage Actions Against the Unresponsive Police after DeShaney, 93 W. Va. L. Rev. 251 (1990/1991).

under section 1983. *Ricketts*, 36 F.3d at 779. First, the plaintiff must prove a constitutional violation--in this case, that the Puerto Rico police department has a policy or custom of providing less protection to women victims of domestic violence with an intent to discriminate against women on the basis of their gender. *See id.* Second, the plaintiff must also prove that defendants acting under color of state law caused the constitutional violation--in this case, that the alleged policy caused Soto's injuries. *See id.*

1. Policy or Custom

Under the first prong of the above-mentioned standard, a plaintiff must adduce evidence that would enable a reasonable jury to infer that the police have a policy or custom to provide less protection to victims of domestic violence than to other victims of violence. *Hynson*, 864 F.2d at 1031. It is not necessary that the policy or custom be formal or written. *Monell* v. *Dep't of Social Serv. of City of New York*, 436 U.S. 658, 690-91, 98 S.Ct. 2018, 2036, 56 L.Ed.2d 611 (1978); *Watson*, 857 F.2d at 695; *Pinder*, 821 F.Supp. at 385. A single incident by itself, however, is generally an insufficient basis for inferring the existence of a policy or custom. *McKee* v. *City* of *Rockwall. Tex.*, 877 F.2d 409, 415-16 (5th Cir. 1989). Furthermore, a plaintiff normally must proffer evidence outside her particular case in order to support the allegation of an unconstitutional policy. *Watson*, 857 F.2d at 695; *Ricketts* v. *City of Columbia, Mo.*, 856 F.Supp. 1337, 3341 (W.D.Mo. 1993), *aff'd*, 36 F.3d 775; *but see Balistreri* v. *Pacifica Police Dept.*, 901 F.2d 696, 701 (9th Cir. 1990) (In reversing district court's dismissal for failure to state a claim, court held that plaintiff's only allegation implicating equal protection, that a responding officer made disparaging remarks to plaintiff victim, strongly suggested both an intention to treat domestic violence cases less seriously than other assaults and an animus against abused women). The evidence of a plaintiff's own case may be sufficient if these facts indicate an ongoing

pattern of police indifference which raises an inference of a policy or custom. *See Thurman*, 595 F.Supp. at 1530. Additionally, a single incident in plaintiff's own case may also be sufficient if there is proof that supervisors or decision-makers have approved or authorized the discriminatory conduct. *Pinder*, 821 F.Supp. at 385.

A plaintiff may attempt to support an allegation of a discriminatory policy with statistical evidence comparing arrest rates in domestic violence cases with arrest rates in nondomestic violence cases. *See e.g.*, *Ricketts*, 36 F.3d at 781-82 (compared number of arrests in domestic abuse cases with nondomestic cases); *McKee*, 877 F.2d at 411-12 (compared number of arrests in assault cases with domestic violence cases); *Watson*, 857 F.2d at 695 (made the same comparison); *Hynson*, 731 F.Supp. at 1240 (plaintiff proffered statistics that demonstrated a lower level of police response for female victims of domestic abuse); *see also Siddle* v. *City of Cambridge, Ohio*, 761 F.Supp. 503, 511-12 (S.D. Ohio 1991) (Court based its dismissal of the equal protection claim in part on plaintiff's failure to compare domestic violence arrest rates with other crimes). A plaintiff may also show a discriminatory policy by demonstrating that police officers avoid arrests in domestic violence cases. *Watson*, 857 F.2d at 696; *Cellini*, 856 F.Supp. at 1221.

In the case before the Court, Soto has presented no statistical evidence comparing the arrest rates of domestic violence cases with other classes of cases. The only statistical evidence proffered by Soto is included in the deposition testimony of expert witness Mercedes Rodriguez. This witness stated that approximately five percent of domestic violence victims were men and that in 1991 one out of four persons incarcerated under Law 54 were women. Docket no. 36, Exhibit VII, at 39. This witness did not indicate from where she obtained these numbers, did not state how many total Law 54 arrests were made, and did not provide a basis for the figures she was mentioning. Further-

more, she did not compare arrest rates under Law 54 with arrest rates for other cases of abuse or violence. This evidence is not sufficient to create a genuine issue on whether the Puerto Rico police have a policy or custom to provide less protection to victims of domestic violence than to other victims of violence.

Soto has, however, presented other evidence on this issue. Specifically, the deposition testimony of both Flores and Betancourt contain references to this matter. Flores testified that some officers "shied away from" Law 54 cases and that many officers, in order to avoid the procedures involved in making an arrest, tried to persuade domestic violence victims to seek protective orders instead. *Id.*, Exhibit IV, at 39-40, 47-49. Additionally, Betancourt testified that he thought it likely that there was resistance among some members of the police force towards Law 54. *Id.*, Exhibit IX, at 39-40. This evidence is sufficient to create a genuine issue as to whether there was a policy or custom to provide less protection to victims of domestic violence. *See Cellini*, 856 F.Supp. at 1221. Accordingly, Soto has satisfied tho first prong of the standard by which a plaintiff may defeat a motion for summary judgment.

2. Discriminatory Intent Towards Women

Under the second prong of the above-mentioned standard, a plaintiff must adduce evidence that would enable a reasonable jury to infer that discrimination against women was a motivating factor behind the policy or custom. *Hynson*, 864 F.2d at 1031. The existence of a discriminatory purpose is crucial in order to successfully show a violation of equal protection rights. *Personnel Adm'r of Massachusetts* v. *Feeney*, 442 U.S. 256, 272-74, 99 S.Ct. 2282, 2293, 60 L.Ed.2d 870 (1979); *Ricketts*, 36 F.3d at 781; *see also Washington* v. *Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 2048, 48 L.Ed.2d 597 (1976) (A basic principle of equal protection law is that a violation must be traceable to a dis-

criminatory purpose); *Smith* v. *City of Elyria*, 857 F.Supp; 1203, 1211 (N.D. Ohio 1994) (To succeed on a claim of sex discrimination, a plaintiff must show either that a policy was discriminatory on its face or that it had a disproportionately adverse impact on women and was motivated by a discriminatory intent). A discriminatory purpose is more than intent as an awareness of the consequences. *Feeney*, 442 U.S. at 279, 99 S.Ct. at 2296; *Ricketts*, 36 F.3d at 781. The plaintiff must show that the policy or custom was implemented "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Feeney*, 442 U.S. at 279, 99 S.Ct. at 2296 (footnote omitted); *Ricketts*, 36 F.3d at 781.

A plaintiff may rely on objective factors in proving a discriminatory intent. *Feeney*, 442 U.S. at 279 n.24, 99 S.Ct. at 2296 n.24. A plaintiff may also use circumstantial evidence to demonstrate the intent's existence. *Village of Arlington Heights* v. *Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 564, 50 L.Ed.2d 450 (1977). Such circumstantial evidence includes patterns of conduct, historical background, substantive departures from normal procedure, and the sequence of events leading up to a specific policy. *Id.* at 266-67, 97 S.Ct. at 564-65. A plaintiff alleging gender-based discrimination should show that a policy which discriminates against victims of domestic violence adversely affects women. *Watson*, 857 F.2d at 696-97. A plaintiff may not, however, rely on an adverse impact alone; she must also prove a discriminatory intent. *Feeney*, 442 U.S. at 274, 99 S.Ct. at 2293; *Davis*, 426 U.S. at 239-42, 96 S.Ct. at 2047-49; *Ricketts*, 36 F.3d at 781; *Spath* v. *Nat'l Collegiate Athletic Ass'n*, 728 F.2d 25, 28 (1st Cir. 1984); *Howell* v. *City of Catoosa*, 729 F.Supp. 1308, 1310 (N.D.Okla. 1990).

In the case before the Court, Soto has adduced no evidence that would create a genuine issue as to the existence of either an adverse impact or a discriminatory intent. Soto

has presented no statistical evidence that would demonstrate an adverse impact on women. As discussed above, Soto's only statistical evidence is a statement by Mercedes Rodriguez, an expert witness, that approximately five percent of domestic violence victims were men and that in 1991 one out of four persons incarcerated under Law 54 were women. Docket no. 36, Exhibit VII, at 39. This witness did not provide a proper basis or source for this information. Moreover, even if she had done so, these figures do not demonstrate a discriminatory intent towards women. It may be that women are incarcerated for Law 54 violations at a rate disproportionately higher than that for men. The police department, however, is not responsible for incarcerating violators; it is responsible for arresting them. A more accurate indicator would be a comparison of the arrest rates for men charged with domestic violence to arrest rates for women charged with domestic violence. *See Ricketts*, 36 F.3d at 781. The little statistical evidence that Soto has proffered is not sufficient to demonstrate the genuine issue as to the existence of a discriminatory intent towards women.

The deposition testimony of Betancourt and Flores is sufficient to create a genuine issue as to the existence of a discriminatory policy towards domestic violence cases. This evidence is not, however, sufficient to demonstrate a genuine issue as to the existence of a discriminatory intent towards women. Flores testified that police officers avoided domestic violence cases. Docket no. 36, Exhibit IV, at 39-40, 47-49. Flores further testified, however, that they did so to avoid the time-consuming court appearances and other procedures that were involved in the prosecution of such cases. *Id.* Betancourt, in his testimony, also indicated that this was the reason for resistance towards domestic violence cases. *Id.*, Exhibit IX, at 41. This testimony may indicate a lack of diligence by some officers with respect to their duties; it does not, by itself, indicate a discriminatory animus toward women.

In her opposition to Defendants' motion for summary judgment, Soto argues and presents evidence that the Puerto Rico police department in 1991 was not complying with the regulations and procedures of Law 54. Specifically, Soto points to the deposition testimony of police officers Juan Orta Landrau and Carrasquillo as proof of Puerto Rico police officers' lack of understanding of the proper procedure for handling domestic violence cases pursuant to Law 54. Docket No. 36, at 26-33 & Exhibits VI, VIII. Additionally, Soto alleges that the police report on her visit to the Rio Grande station on April 17, 1991 contains a falsified signature of her name. Docket no. 36, at 5 & Exhibits I, II. Lastly, Soto also alleges that for one year Betancourt failed to meet with the Women's Affairs Commission[8] to discuss Law 54. Docket no. 36, at 36-37 & Exhibit X. All of this evidence may be proof that Defendants violated Law 54. This evidence of the violation of a state law is not, however, proof of a discriminatory intent towards women.

Lastly, Soto also proffers statements made by Betancourt in 1990 to the press regarding Law 54. *See* Docket no. 36, at 38-44 & Exhibit 12. Betancourt stated that Law 54 needed to be amended because it was not having the hoped-for results and that treatment from psychologists or social workers might be an effective way to prevent domestic violence. Soto's own expert, Mercedes Rodriguez, agreed in her deposition testimony that she thought Law 54 should be amended. Docket no. 36, Exhibit VII, at 34. These statements to the press, along with the rest of Soto's evidence, do not constitute evidence that would enable a reasonable jury to infer that discrimination against women

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[8]The Women's Affairs Commission is a public agency whose purpose is to promote women's rights in Puerto Rico. P.R. Laws Ann. tit. 1, §§ 301 - 310 (1982). Under Law 54, the Commission was responsible for, among other things, promoting education on domestic violence and developing strategies to encourage government agencies to improve their response to the victims of domestic violence. P.R. Laws Ann. tit. 8, § 651 (Supp. 1991).

was a motivating factor behind a policy or custom of the Puerto Rico police department. Accordingly, the Court finds that Soto has not met the second prong of the standard under which a plaintiff must defeat a motion for summary judgment in a claim alleging an equal protection violation in a domestic abuse case.

3. Causation

Under the third prong of the above-mentioned standard, a plaintiff must adduce evidence that would enable a reasonable jury to infer that the plaintiff was injured by the defendants' policy or custom. *Hynson*, 864 F.2d at 1031; *see also City of Canton, Ohio* v. *Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197, 1203, 103 L.Ed.2d 412 (1989) (The first inquiry of a section 1983 claim is whether there is a "direct causal link" between a policy or custom and the plaintiff's alleged constitutional deprivation). A plaintiff must prove that the allegedly discriminatory custom caused her injury. *Ricketts*, 36 F.3d at 779. Generally, a police officer's failure to make an arrest for a single incident of domestic violence should not be found to have caused a subsequent incident of violence. *Bicketts*, 36 F.3d at 780. Furthermore, a court should consider whether the plaintiff asked the police to arrest the perpetrator of the domestic violence at issue. *See McKee*, 877 F.2d at 415. Inquiries into causation in section 1983 claims should refer to state law tort principles. *Gutierrez-Rodriguez* v. *Cartagena*, 882 F.2d 553, 561 (1st Cir. 1989). Under Puerto Rico law, a negligent defendant will be liable for the consequences attributable to a reasonably foreseeable intervening cause, including the conduct of a third party. *Widow of Andino* v. *W.R.A.*, 93 P.R.R. 168, 178 (1966); *Marshall* v. *Perez Arzuaga*, 828 F.2d 845, 848 (1st Cir. 1987). An unforeseeable or abnormal act by an intervening third party, however, will break the chain of causality. *Widow of Andino*, 93 P.R.R. at 178: *Perez Arzuaga*, 828 F.2d at 848.

In the case before the Court, Soto stated in her deposition that when she went to the police station on April 17, Carrasquillo asked her if she wanted to have her husband put in jail. Docket no. 33, Exhibit III, at 40. Soto further stated that she declined to have him arrested. *Id.* There is no evidence that the police refused a request by her to have her husband arrested. Furthermore, there is no evidence that the police department was aware, prior to April 17, 1991, of other incidents in which Rodriguez had abused Soto. The incident of April 17, was the first time that the police could have arrested Rodriguez for domestic violence. Thus, it does not appear that Defendants discriminated against Soto's domestic violence case. Even if Defendants did discriminate against Soto's domestic violence case, however, Rodriguez' intervening actions were so shocking as to not be reasonably foreseeable. His murder of the two children constitutes an intervening cause whose unforeseeability and abnormality break the chain of causality to Defendants conduct. It would be too speculative to find that the non-arrest of Rodriguez for the incidents of April 17, 1991, caused the death of Soto's two children. *See Ricketts*, 36 F.3d at 780. Soto has not adduced evidence that would create a genuine issue as to whether Defendants' conduct was a direct causal link of Soto's injuries. Accordingly, Soto has failed to meet the third prong of the standard for a plaintiff who is alleging an equal protection violation in a domestic violence case to defeat a motion for summary judgment.

CONCLUSION

In order to defeat Defendants' motion for summary judgment on Soto's equal protection claim, she must adduce evidence to create a genuine issue as to all three of the prongs of the above-mentioned standard. Soto has adduced evidence that creates a genuine issue as to whether the Puerto Rico police have a policy or custom to provide less protection to victims of domestic violence than to other victims of violence. Soto has not adduced sufficient evidence, however, to create a genuine issue of material fact as to whether

discrimination against women was a motivating factor behind such a policy and as to whether her injuries were caused by this policy or custom. Because Soto has not adduced sufficient evidence to create a genuine issue as to the second and third prongs of the standard, the Court is compelled to dismiss Soto's claims against Betancourt and Flores for a violation of equal protection on the basis of gender discrimination.

The Court is not unmindful of the magnitude of the tragedy which Soto has had to face. However, not every tragic loss will amount to a constitutional violation. The Court echoes the following sentiments expressed by Judge Coffin in *Valdivieso Ortiz*:

> We emphasize that in denying a cause of action to appellants, we seek neither to minimize the loss of a family member nor to denigrate the fundamental liberty interest in matters of family life that has long been a part of our constitutional fabric. But even an interest of great importance may not always be entitled to constitutional protection.

807 F.2d at 10 (citation omitted). The Court acknowledges the suffering with which Soto is confronted; however, the Court must also acknowledge that Soto's loss does not give rise to a claim for a constitutional violation. The Court, therefore, is compelled to dismiss her section 1983 claims against Defendants Betancourt and Flores.

Soto has also brought a Puerto Rico law claim against Betancourt and Flores pursuant to the Court's supplemental jurisdiction. The assertion of supplemental jurisdiction over state law claims is within a federal court's discretion. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). If federal law claims are dismissed before trial, however, the state law claims should also be dismissed. *Id.* at 726, 86 S.Ct. at 1139; *Figueroa*

Ruiz v. *Alegria*, 896 F.2d 645, 650 (1st Cir. 1990); *Libertad* v. *Welch*, 854 F.Supp. 19, 35 (D.P.R. 1993). Accordingly, the Court hereby dismisses without prejudice Soto's Puerto Rico law claims against Betancourt and Flores.

WHEREFORE, the Court hereby grants Betancourt and Flores' motion for summary judgment and dismisses Soto's claims against them.

IT IS SO ORDERED.

San Juan, Puerto Rico, January 20, 1995.

HECTOR M. LAFFITTE
U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

- - - - - - - - - - - - - - - - -

FLOR MARIA SOTO,

Plaintiff,

-against-

LUIS CARRASQUILLO,

Defendant.

- - - - - - - - - - - - - - - - -

Civil No. 93-1594 (HL)

OPINION AND ORDER

Before the Court is Plaintiff Flor Maria Soto's ("Soto") motion for reconsideration of the Court's opinion and order of January 20, 1995. In that opinion, the Court granted the motion for summary judgment filed by Defendants Ismael Betancourt y Lebrón ("Betancourt") and Carlos Flores ("Flores").[1] The Court dismissed Soto's claims under section 1983[2] against these two Defendants for alleged violations of her due process and equal protection rights. Soto now submits additional evidence and argues that the Court erred in applying the law on due process and equal protection claims. For the reasons set forth below, the Court denies this motion for reconsideration.

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1 See 878 F. Supp. 324 (D.P.R. 1995).

2 42 U.S.C. § 1983.

A. Due Process Claim

This case arises out of a tragic incident in which Soto's husband, Angel Rafael Rodriguez ("Rodriguez"), killed the couple's two children and himself. Soto alleged that her due process rights were violated as a result of Defendants' failure to arrest Rodríguez or otherwise provide protection from him. She brought this action individually and not in a representative capacity on behalf of her children. The Court dismissed her due process claim based on the holding in *Valdivieso Ortiz v. Burgos,* 807 F.2d 6 (1st Cir. 1986), that an individual does not have a cause of action under section 1983 for a due process violation based on the death of a family member. *See* 878 F.Supp. at 327. In her motion for reconsideration, Soto moves for leave to amend her complaint to bring an action as the representative of her children. For purposes of this motion for reconsideration, the Court grants this request. After a consideration of the record, however, the Court must dismiss the claim brought on behalf of Soto's children.

The Due Process Clause does not require the state to protect the life or liberty of its citizens from harms inflicted by private actors. *DeShaney v. Winnebago County D.S.S,* 489 U.S. 189, 195, 109 S.Ct. 998, 1003, 103 L.Ed.2d 249 (1989). "[A] State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 197, 109 S.Ct. at 1004. There may, however, be certain limited exceptions to this rule of nonliability. *Martinez v. Colón,* ___ F.3d ___, No. 94-2138, slip. op. at 8 (1st Cir. May 31, 1995). A state may be liable if it fails to protect an individual who is in the state's custody or "functional custody." *DeShaney,* 489 U.S. at 198-200 & 201 n.9, 109 S.Ct. at 1004-05 & 1006 n.9; *Martinez,* slip op. at 8-9. A state may also be liable if state actors have done anything to make an individual more vulnerable to the harms of a private actor. *DeShaney,* 489 U.S. at 201, 109 S. Ct. at 1006; *Martinez,* slip op. at 8-9; *Souza v. Pina,* 53

F.3d 423, 427 (1st Cir. 1995); *Monahan v. Dorchester Counseling Ctr., Inc.*, 961 F.2d 987, 992-93 (1st Cir. 1992). For there to be liability under this last exception, however, the state actors must have taken affirmative acts that render the individual more vulnerable to private harms. *Martinez*, slip. op. at 11; *Monahan*, 961 F.7d at 992-93; *see also Reed v. Gardner*, 986 F.2d 1122, 1127 (7th Cir. 1993) (Affirmative act was police officers' arresting and taking into custody a sober driver, leaving the car to a drunk driver who subsequently crashed into plaintiffs); *Dwares v. City of New York*, 985 F.2d 94, 98-100 (2nd Cir. 1993) (Affirmative acts were police officers' conspiring with and assuring "skinheads" that they would not be arrested for beating up flag burners; these "skinheads" subsequently assaulted plaintiff); *Freeman v. Ferguson*, 911 F.2d 52, 54-55 (8th Cir. 1990) (Police chief directed his officers not to arrest his friend who subsequently killed plaintiffs).

In support of her claim based on a violation of her due process rights, Soto alleges that Defendants failed to arrest Rodriguez; that they failed to properly inform her of her rights under Law 54,[3] the Puerto Rico law on domestic violence; that they failed to protect her from Rodriguez, and that Betancourt failed to provide for the proper training of officers for domestic violence cases. These allegations, however, are of failures to act. If Soto is to bring a successful action for a due process claim based on private violence, Defendants must have taken *affirmative acts* that rendered Soto or her children more vulnerable to Rodríguez' actions. *See Martinez*, slip. op. at 11; *Monahan*, 961 F.2d at 992-93. The affirmative acts alleged by Soto are that Defendants improperly prepared and altered their report on Soto's visit to the Rio Grande police station on April 17, 1991; that following Soto's visit to the station, Flores went to Rodriguez' home to tell him that Soto wanted to have him arrested under Law 54; and that Betancourt made

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[3] P.R. Laws Ann. tit. 8, § 601-664 (Supp. 1991).

irresponsible statements to the press regarding Law 54. *See* Docket no. 50, at 7-8. These actions may indicate that Defendants violated the procedures of Law 54, that Flores was on friendly terms with Rodriguez, or that Betancourt had unconventional views on Law 54. These acts, particularly Flores' telling Rodríguez that his wife wanted to have him arrested, also may have exacerbated the situation. These are not the kinds of affirmative state acts, however, that would create state liability for private violence. *See Souza,* 53 F.3d at 427. Rodriguez' actions were simply "'too remote a consequence'" of Defendants' acts to create liability under the Due Process Clause. *See Graham v. Independent School Dist. No. I-89,* 22 F.3d 991, 995 (10th Cir. 1994) (quoting *Martinez v. California,* 444 U.S. 277, 285, 100 S.Ct. 553, 559, 62 L.Ed.2d 481 (1980)). Accordingly, the Court hereby denies Soto's motion to reconsider the dismissal of her due process claim.[4]

B. Equal Protection Claim

Soto also claimed that as a result of Defendants' actions she suffered a violation of her right to equal protection. The Court dismissed that claim, and Soto now argues

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[4] In her motion for reconsideration, Soto relies on Pinder v. Johnson, 33 F.3d 386 (4th Cir. 1994). In that case, defendant, police officer promised plaintiff that her ex-boyfriend would be kept in custody overnight and plaintiff, relying on this promise, did not take any measures to protect her children; the ex-boyfriend was not, however, detained by the police and he subsequently killed plaintiff's children in a fire. 33 F.3d at 369-70. The Fourth Circuit originally held that the defendant's conduct constituted affirmative acts which could create liability under the Due Process Clause. Id. at 371. In an en banc review, however, the Fourth Circuit reversed its earlier decision and held that the police officer's promise did not create a duty to protect and that a failure to incarcerate is not an affirmative act which gives rise to liability under the Due Process Clause. See Pinder v. Johnson, ___ F.3d ___, No. 93-2125, 1995 WL 320571, at *5 (4th Cir. May 30, 1995).

that the Court erred in doing so. In the opinion and order of January 20, 1995, the Court held that Rodriguez' actions were so shocking and unforeseeable as to break any chain of causality linking Soto's harm to Defendants' conduct. *See* 878 F.Supp. at 331-32. An essential element of a claim pursuant to section 1983 is that the state actor's conduct must have caused a plaintiffs deprivation of federal or constitutional lights. *Voutor v. Vitale,* 761 F.2d 812, 819 (1st Cir. 1995). In her motion for reconsideration, Soto has not adduced any new evidence that would create a genuine issue of fact as to whether Defendants' conduct was a direct causal link of Soto's injuries. Accordingly, the Court hereby denies her motion to reconsider the dismissal of her equal protection claim.

Lastly, the Court acknowledges, as it did in its order of January 20, 1995, the tragedy with which Soto has been confronted. Despite the magnitude of this tragedy, Soto's loss does not give rise to a claim for a constitutional violation. Therefore, the Court is compelled to deny this motion.

WHEREFORE, the Court hereby denies Soto's motion for reconsideration (Docket no. 50).

IT IS SO ORDERED.
San Juan, Puerto Rico, July 3, 1995.

HECTOR M. LAFFITTE
U.S. District Judge

United States Constitution

Amendment XIV, Section I

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

COMMONWEALTH OF PUERTO RICO
Office of Legislative Services
CAPITOL BUILDING

February 22, 1990

Carlos R. García Jaunarena, Director of the Legal Division of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 54 (Substitutive to S.B. 90 and S.B. 470) (Conference of the 1st Session of the 11th Legislature of the Commonwealth of Puerto Rico, entitled:

AN ACT to establish a body of measures addressed to prevent and fight domestic abuse in Puerto Rico; characterize the crimes of Abuse, Aggravated Abuse; Abuse Through Threat; Abuse Through Restriction of Liberty; and Conjugal Sexual Assault, and fix penalties; empower the Courts to issue Orders for Protection for the victims of domestic abuse and establish a speedy and expeditious procedure for the handling and adjudication of said orders; establish measures addressed to the prevention of domestic abuse and direct the Women's Affairs Commission to divulge, and orient the community on the scope of this Act, and to appropriate funds,

and finds the same are complete, true and correct versions of each other.

_____
Carlos R. García Jaunarena

(Substitutive to
S.B. 90 and
S.B. 470)
(Conference)

(Act No. 54)

(Approved August 15, 1989)

AN ACT

To establish a body of measures addressed to prevent and fight domestic abuse in Puerto Rico; characterize the crimes of Abuse, Aggravated Abuse; Abuse Through Threat; Abuse Through Restriction of Liberty; and Conjugal Sexual Assault, and fix penalties; empower the Courts to issue Orders for Protection for the victims of domestic abuse and establish a speedy and expeditious procedure for the handling and adjudication of said orders; establish measures addressed to the prevention of domestic abuse and direct the Women's Affairs Commission to divulge, and orient the community on the scope of this Act, and to appropriate funds.

STATEMENT OF MOTIVES

Domestic abuse is a type of antisocial behavior that is a serious problem in Puerto Rican families. It is the physical and emotional mistreatment which a person suffers at the hands of a spouse or former spouse, or at the hands of a person with whom there has been an intimate relationship. Although men as well as women may be victims of conjugal abuse, studies show that women are usually the victims of the aggressive and violent conduct that we call conjugal abuse. The National Crime Survey Bureau of Justice Statistics conducted a study from 1978 to 1982 and found that around 2.1 million women in the United States were victims of

conjugal abuse at least once in an average period of twelve (12) months. (Special Report of August 1986, pages 1-5.) The investigators figure that 60% of all married women in Puerto Rico are victims of conjugal abuse.

Although the great majority of the incidents of domestic abuse are not reported to the law enforcement agencies, police statistics in Puerto Rico reveal an alarming trend. In 1983, eighty-one percent (81%) of the murders or homicides of women were perpetrated by a family member or friend, which dropped to 58% in 1984, but in 1985, it rose to 64%. The police do not have this data for subsequent years, but it is a fact that incidents of domestic abuse are seen in an increasinglyaggressive pattern that is rising both in frequency as in intensity, and which is often passed from one generation to another.

Investigators hold that children who are victims of domestic abuse or come from homes where there are incidents of domestic abuse, carry within them the scars and patterns of violence throughout their lives. To tolerate domestic abuse today, contributes to the breaking up of families, fosters crime, and weakens the values of human conviviality.

Domestic abuse is one of the most complex criminal acts of our society. In an awareness of its difficulties and effects, for the past six years, the Legislature has been evaluating several legislative measures to attend to this problem and seek viable options to eradicate this criminal behavior, which are not necessarily limited to establishing specific sanctions against the offender. Throughout these years, many reports, statistics, true cases, psychological evaluations of persons affected by domestic abuse, and the recommendations of professionals have been studied, which have led us to the adoption of integral legislation that comprises certain measures for its prevention through education, orientation and protection.

There is no doubt that to deal effectively with this problem, the desire of the public sector, the private sector, the police, the courts, the assistance professionals and the community in general to work together, is required. It is indispensable that we attack this problem by fixing our attention on its violent and criminal nature and that we design measures addressed to the aggressors, and measures to protect the victims.

The unique nature of this Act rests on the power granted to the Trial Court Judges and the Municipal Judges to issue affirmative measures for the protection of the victims through orders addressed to the aggressors to abstain from engaging in certain types of conduct towards the victim. Therefore, this Act specifies and establishes a simple and expeditious process to obtain civil remedies through Orders for Protection. This procedure is rooted in the Legislature's interest in attending to the needs of the victims of domestic abuse. Its purpose is to expedite the process for the immediate attention and solution of the controversies that are generated in the homes where violence prevails, and to attend to the clamor for protection that the victims of domestic abuse address to the State. It also includes self-help elements focused on encouraging the victims of domestic abuse to seek immediate, provisional legal remedies, motu propio, which will contribute to the development of self-esteem and self-determination of the persons who are in a situation involving abuse.

This Act also describes the crime of abuse in different modes, and imposes penalties for its commission, which are greater in cases of recidivism, and under aggravating circumstances. It also establishes measures for police intervention, such as mandatory arrest, the responsibility of providing assistance to the victim, and compiling information on domestic abuse.

Thus, this Act compiles in an integrated manner the various measures to deal with the fundamental areas that

require an immediate solution to execute the public policy of fighting crime and offering options of hope to the Puerto Rican family.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

CHAPTER I

GENERAL PROVISIONS

SECTION 1.1 - TITLE.

This Act shall be known as the "Domestic Abuse Prevention and Intervention Act".

SECTION 1.2 - PUBLIC POLICY.

(P.R. Laws Ann. tit. 8 § 601)

The Government of Puerto Rico recognizes that domestic abuse is one of the gravest and most complex problems of our society. In developing the public policy on this matter, we must give attention to the handling of the difficulties that domestic abuse presents, especially for women and children, to preserve their physical and emotional integrity, achieving their safety, and saving their lives.

Domestic violence is one of the most critical manifestations of the effect of the inequities in the relationships between men and women. The discriminatory ideas, attitudes and conduct also permeate those social institutions called upon to resolve and prevent the problem of domestic abuse and its consequences. The efforts of these institutions to identify, understand and handle abuse have been limited, and often inadequate.

The Government of Puerto Rico reaffirms its constitutional commitment to protect the life, safety and dignity of men and women. It also recognizes that domestic abuse violates the integrity of the family and its members and is a

serious threat to the stability and preservation of the civilized conviviality of our people.

As a public policy, the Government of Puerto Rico assertively repudiates domestic abuse as contravening the values of peace, dignity and respect that the People should maintain for individuals, families, and the community in general. This public policy propitiates the development, establishment and strengthening of effective measures to give protection and help to the victims, options for the rehabilitation of the transgressors, and strategies for the prevention of domestic abuse.

SECTION 1.3 - DEFINITIONS.
(P.R. Laws Ann. tit. 8 § 602)

For the purposes of this Act, the following terms shall have the meaning stated hereinbelow:

(a) "Law Enforcement Officer" shall mean any member or officer of the Puerto Rico Police Corps.

(b) "Cohabitation" shall mean maintaining a consensual relationship similar to that of spouses.

(c) "Grave emotional harm" shall mean and arises when as a result of domestic abuse, there is evidence that a person recurrently shows one or several of the following characteristics: paralyzing fear; feelings of despair or helplessness; feelings of frustration and failure; feelings of insecurity, ineffectiveness, isolation, weakened self-esteem, or other similar conduct, resulting from repeated arts of commission or omission.

(d) "Intimidation" shall mean any act or expressions which, when used recurrently, has the effect of exerting moral pressure on a person's animus, who, in fear of suffering emotional or physical injury of his/her self, his/her property, or another person's self, is forced to perform an act against his/her will.

(e) "Order for Protection" shall mean every order issued in writing under the seal of the Court, which dictates the measures addressed to an abusing party to abstain from

committing or performing certain acts or conduct which constitute domestic abuse.

(f) "Persecution" shall mean keeping a person under constant or frequent surveillance by their presence in places that are immediate or relatively near to the home, residence, school, work or vehicle in which the person is, to cause fear or dread in the animus of a prudent and reasonable person.

(g) "Respondent" shall mean any person against whom an Order for Protection is filed.

(h) "Petitioner" shall mean any person who applies to a court for an Order for Protection.

(i) "Marital Relationship" shall mean the relationship between spouses, former spouses, persons who are cohabiting or who have cohabited, those who have, or have had an intimate consensual relationship, and those who have procreated a son or daughter by each other.

(j) "Court" shall mean the trial court of the General Court of Justice, and the offices of the Municipal Judges.

(k) "Domestic Abuse" shall mean a constant pattern of conduct involving physical force or psychological violence, intimidation or persecution against a person by his/her spouse, former spouse, a person with whom he/she cohabits, or has cohabited, with whom he/she has, or has had a consensual relationship, or a person with whom a son or daughter has been procreated, to cause physical harm to their self, their property, or another's self, or to cause him/her grave emotional harm.

(l) "Psychological Abuse" shall mean a constant pattern of conduct performed to the dishonor, discredit or scorn of personal worth, unreasonable limitation to access and handling of common property, blackmail, constant vigilance, isolation, deprivation of access to adequate food or rest, threats of deprivation of custody of sons or daughters or destruction of objects held in esteem by the person, except those that privately belong to the offender.

CHAPTER II

ORDERS FOR PROTECTION AND PROCEDURAL PHASES

SECTION 2.1 - ORDERS FOR PROTECTION. (P.R. Laws Ann. tit. 8 § 621)

Any person who has been the victim of domestic abuse, or conduct which constitutes said crime as described in this Act, or in the Penal Code of the Commonwealth of Puerto Rico or any other special Act, in the context of a marital relationship, may file a petition in Court and request an Order for Protection, motu propio, or through legal counsel, or through a Law Enforcement Officer without having first filed a suit or complaint. When the Court determines that there is sufficient cause to believe that the petitioner has been a victim of domestic abuse, it may issue an Order for Protection. Said Order may include the following, without it being construed as a limitation:

(a) Adjudicate provisional custody of the petitioner's minor daughters and sons,

(b) Order the respondent to leave the dwelling which he/she shares with the petitioner regardless of any right claimed thereon,

(c) Order any of the parties to abstain from molesting, harassing, pursuing. intimidating, or interfering in any way with the exercise of provisional custody over the minor children that have been adjudicated to one of them,

(d) Order the respondent to abstain from entering any place in which the petitioner is, when, in the discretion of the Court, said limitation is needed to prevent the respondent from molesting, intimidating, threatening or in any other way, interfering with the petitioner or with the minor children whose provisional custody has been adjudicated to him/her,

(e) Order the respondent to pay support for the minor children when their custody has been awarded to the petitioner, or for the minors and to the petitioner, when there is a legal obligation to do so,

(f) Restrain the respondent from concealing or removing the minor sons and daughters of the parties from the jurisdiction,

(g) Forbid the respondent from disposing in any way of private property of the petitioner, or the property of the legal conjugal partnership, or community property, if any. Provided, that when the administration of a business, trade or industry is involved, the respondent must submit a monthly financial statement of the administrative matters to the Court,

(h) Order whatever provisional measures are needed regarding the possession and use of the residence of the parties, and on the personal property listed and comprised in subsections 1, 2, 3, 4, 4(a), 5, and 6 of Article 249 of the Code of Civil Procedure as amended, which establishes those properties that are exempted from attachment,

(i) Order the respondent to pay financial compensation from private property for damages caused by conduct constituting domestic abuse. Said compensation can include, but shall not be limited to compensation for moving expenses, expenses for the repair of property, legal expenses, medical, psychiatric, psychological, counselling, guidance, lodging, housing and other similar expenses, without prejudice to other civil actions to which the petitioner is entitled,

(j) Issue any order needed to enforce the purposes and public policy of this Act.

. . .

SECTION 2.3 - PROCEDURE.

(P.R. Laws Ann. tit. 8 § 623)

Any person may request the civil remedies established by this Chapter for him/herself or in behalf of any other person, when said person has a physical or mental disability, in case of an emergency, or when the person is unable to request it personally. The right to request the remedies established herein, shall not be affected because the petitioning party abandoned his/her residence to avoid domestic abuse.

(a) Initiation of Action. The procedure to obtain an Order for Protection can be initiated:

(1) By filing a verbal or written petition; or
(2) Within any case pending between the parties; or
(3) By request of the Government Attorney in a penal procedure, or as a condition for probation or parole. To help those persons who are interested in obtaining an Order for Protection under this Act, the Courts Administration shall have simple forms to request and further said Order, available in the Office of the Clerk of the Courts of Puerto Rico and in the offices of the Municipal Judges. It shall also provide them with help and orientation to complete and present them.

. . .

CHAPTER III

DELINQUENT CONDUCT; PENALTIES, AND OTHER MEASURES

SECTION 3.1 - ABUSE.
(P.R. Laws Ann. tit. 8 § 631)

Every person who makes use of physical force or psychological abuse, intimidation or persecution against the person of his/her spouse, former spouse, or the person with whom he/she cohabits, or has cohabited, or the person with whom he/she has, or has had a consensual relationship, or the person with whom a son or daughter has been procreated, to cause physical harm to the person, the property held in esteem by him/her, except that which is privately owned by the offender, or to another's person, or to cause grave emotional harm, shall be punished by imprisonment for a fixed term of twelve (12) months, unless there are extenuating circumstances, when it may be reduced to a term of not less than nine (9) months, and if there were

aggravating circumstances, it may be increased to eighteen (18) months.

The Court may impose the penalty of restitution in addition to the established penalty of imprisonment.

SECTION 3.2 - AGGRAVATED ABUSE.
(P.R. Laws Ann. tit. 8 § 632)

A penalty of imprisonment for a fixed term of three (3) years shall be imposed when Abuse, as described in this Act, has been committed on the person of the spouse, former spouse or the person with whom he/she cohabits or has cohabited, or with whom he/she has had a consensual relationship, or with whom a son or daughter has been procreated, if one or more of the following circumstances exist:

(a) In the case of spouses or cohabiters, when they are separated or there is an Order for Protection excluding one of the parties from the residence, the person enters the dwelling of the person or the place in which he/she is lodged and the Abuse is committed therein; or

(b) When grave bodily harm is inflicted on the person; or

(c) When it is committed with a lethal weapon under circumstances that do not indicate the intention of killing or maiming; or

(d) When committed in the presence of minors; or

(e) When it is committed after an Order for Protection or Resolution has been issued against the person charged, in aid of the victim of abuse;

(f) The person is induced, incited or forced to be drugged with controlled substances, or with any other substance or means that alters the will of the person, or to become intoxicated with alcoholic beverages; or

(g) when child abuse is committed and simultaneously incurred.

If there were aggravating circumstances, the fixed penalty may be increased to a maximum of five (5) years, if

there were extenuating circumstances it may be reduced to a minimum of two (2) years.

The court may impose the penalty of restitution in addition to the established penalty of imprisonment.

SECTION 3.3 - ABUSE BY THREAT.
(P.R. Laws Ann. tit. 8 § 633)

Any person who threatens his (her) spouse, ex-spouse or the person with whom he (she) cohabits or with whom the person has had a consensual relationship, or the person with whom he (she) has a son or daughter, to cause specific damage to that person, or the property of such person, except that which is private to the offender, or to some other person, shall be sanctioned with the penalty of imprisonment for a fixed term of twelve (12) months, except that if there were extenuating circumstances it may be reduced to a term of not less than nine (9) months and if there were aggravating circumstances, it may be increased up to eighteen (18) months.

The court may impose the penalty of restitution in addition to the penalty of imprisonment.

SECTION 3.4 - ABUSE BY RESTRICTION OF LIBERTY.
(P.R. Laws Ann. tit. 8 § 634)

Any person who uses violence or intimidation on the person of his (her) spouse, former spouse, of the person with whom he (she) cohabits or has cohabited, or with whom he (she) has or has had a consensual relationship, or the person with whom he (she) has procreated a son or daughter, or using the pretext of suffering from, or that one of the above-mentioned persons suffers from a mental or illness defect, to restrict his (her) liberty with the knowledge of the victim, shall be sanctioned with the penalty of imprisonment for a fixed term of three (3) years. If there were aggravating circumstances, the fixed penalty established may be raised to a maximum of five (5) years; if there were extenuating circumstances, it may be reduced to a minimum of two (2) years.

The court may impose the penalty of restitution in addition to the established penalty of imprisonment.

SECTION 3.5 - CONJUGAL SEXUAL ASSAULT.

(P.R. Laws Ann. tit. 8 § 635)

As provided hereinbelow, the penalty of imprisonment shall be imposed on any person that engages in a sexual relation without the consent of the spouse or former spouse, or with the person with whom he (she) is cohabiting or has cohabited, or with whom he (she) has or has had a consensual relationship, or the person with whom he (she) has procreated a son or daughter, in any of the following circumstances:

(a) If the person has been compelled to engage in sexual conduct through the use of force, violence, intimidation or threat of grave or immediate bodily harm; or

(b) If the person's capacity to resist has been substantially annulled or reduced, without the person's consent through the use of hypnotic means, narcotics, depressants, stimulants or similar means or substances; or

(c) If, due to an illness or temporary or permanent mental disability, the person were unable to understand the nature of the act at the time it is carried out; or

(d) If the spouse or the person with whom he (she) cohabitates is forced or induced by the use of abuse and/or psychological violence to participate or get involved in an undesired sexual relation with third persons.

The penalty to be imposed for this crime, with the exception of the modality referred to in Subsection (a) of this Section, shall be imprisonment for a fixed term of fifteen (15) years. If there were aggravating circumstances, the established fixed penalty may be raised to a maximum of twenty-five (25) years, if there were extenuating circumstances, it may be reduced to a minimum of ten (10) years.

The penalty to be imposed for the modality of the crime referred to in Subsection (a) of this Section, shall be

imprisonment for a fixed term of thirty (30) years. If there were aggravating circumstances, the fixed penalty established may be raised to a maximum of fifty (50) years, if there were extenuating circumstances, it may be reduced to a minimum of twenty (20) years.

When the modality of the crime described in Subsection (a) of this Section is committed while the author of the crime has penetrated the victim's home without the consent of the latter, or a house or residential building where the victim is present, or the yard, land, or parking area thereof, and when the spouses or cohabitants were separated and residing in different dwellings or when they have filed legal suit for divorce, the penalty for the crime shall be imprisonment for a fixed term of sixty (60) years. If there were aggravating circumstances, the fixed penalty established may be raised to a maximum of ninety-nine (99) years, if there were extenuating circumstances, it may be reduced to a minimum of forty (40) years.

The Court may impose the penalty of restitution in addition to the established penalty of imprisonment in any of the above indicated modalities.

. . .

SECTION 3.8 - ARREST.
(P.R. Law Ann. tit. 8 § 638)

Notwithstanding the provisions of Rule 11 of the Rules of Criminal Procedure, as amended, every law enforcement officer shall make an arrest, even though there is no order to such effects, if he has grounds to believe that the person to be arrested has committed, even though not in his presence, or that is committing in his presence, a violation to the criminal provisions of this Act.

SECTION 3.9 - SIGNING AND SWEARING OF CHARGES.

(P.R. Law Ann. tit. 8 § 639)

Notwithstanding the provisions of Rule 5 of the Rules of Criminal Procedure, as amended, the prosecuting attorneys and the members of the Puerto Rico Police shall sign and swear all charges for violation to the provisions of this Act when the acts that constitutes the crime are known to them through information and belief.

In no case in which the above-mentioned circumstances concur, shall the person who is the victim of the alleged facts that constitutes the crime be required to sign the accusation.

SECTION 3.10 - ASSISTANCE TO THE VICTIM OF ABUSE.

(P.R. Law Ann. tit. 8 § 640)

Whenever a law enforcement officer intervenes with a person that claims to be a victim of abuse, he shall take all those measures that he deems necessary to prevent said person from being abused again. He shall take the followings steps, among others:

(a) If the person indicates that he/she has suffered injuries, blows or wounds that require medical assistance, although not visible, he shall give the person the needed first aid treatment, shall volunteer to make arrangements for the person to receive adequate medical treatment and shall provide transportation to a medical services center where the person can be treated.

(b) If the person expresses concern for his/her safety, he/she shall make the arrangements needed to transport the person to a safe place.

(c) When the victim of Abuse requests it, the law enforcement officer shall protect him/her by accompanying and providing assistance at all times while he/she takes his/her personal belongings from his/her residence or from any other place where the same may be.

(d) Advise the victim of abuse on the importance of preserving the evidence.

(e) Provide the victim with information as to her/his rights, and of the government and private services available for victims of Abuse, including, but not limited to the remedies provided under the Victims and Witnesses Protection and Assistance Act, number 77 of July 9, 1986, and Act No. 91 of July 13, 1988. He shall also give the victim a copy of the Guide for Victims of Domestic Abuse.

SECTION 3.11 - PREPARING OF REPORTS.
(P.R. Law Ann. tit. 8 § 641)

Whenever a law enforcement officer intervenes in an incident of domestic violence, he shall prepare a written report of the same. Said report shall contain the allegations of the persons involved and the witnesses, the type of investigation conducted and how the incident was resolved.

In said report, the law enforcement official shall include any statement of the victim as to the frequency and severity of previous incidents of domestic violence, and on the number of times the person has resorted to the Police or to any private or public entity, or to a particular person to seek help.

This report shall be prepared for all interventions even though no criminal charges are filed against the alleged aggressor. These reports shall be kept separate from the reports on incidents of another nature.

The Police Superintendent shall establish a system for the collection of information that makes it possible to keep a copy of each intervention report in the police station where it was originated and that will expedite the centralized compiling thereof in the Statistics Division of the Puerto Rico Police.

The Statistics Division of the Puerto Rico Police shall receive a monthly copy of every intervention report prepared

pursuant to this Section, shall compile the information contained therein, and shall prepare an annual public statistical report on the incidents of domestic violence in Puerto Rico. A copy of this report will be sent to the Women's Affairs Commission, Office of the Governor of the Commonwealth of Puerto Rico.

The Police Superintendent shall establish the norms to guarantee confidentiality with regard to the identity of the persons involved in incidents of domestic violence.

CHAPTER IV

MEASURES TO PREVENT DOMESTIC ABUSE

SECTION 4.1 - FUNCTIONS OF THE WOMEN'S AFFAIRS COMMISSION.
((P.R. Laws Ann. tit. 8 § 651)

The Women's Affairs Commission created by Act No. 57 of May 30, 1973, as amended, and in harmony with the public policy stated in this Act, shall be responsible for:

(a) Promoting and developing educational programs for the prevention of domestic abuse.

(b) Studying, investigating and publishing reports on the domestic abuse problem in Puerto Rico, its manifestations, scope, consequences and the options for confronting and eradicating it.

(c) Identifying groups and sectors in which domestic abuse is manifested, educating them and making them aware of the skills they need to combat it.

(d) Creating an awareness among assistance professionals regarding the needs of victims of abuse and their families.

(e) Developing strategies to encourage changes in the policies and procedures in government agencies in order to improve their response to the needs of the victims of abuse.

(f) Establishing and encouraging the establishment of programs of information, support and counseling services for abuse victims.

(g) Encouraging the establishment of shelters for abuse victims.

(h) Encouraging programs of services for boys and girls who come from homes where there is abuse, in coordination with the Department of Social Services.

(i) Providing training and orientation services for assistance professionals on the treatment and counselling of abuse victims.

(j) Evaluating the progress in the implementation of this Act and submit annual reports to the Governor and the Legislature.

(k) Analyzing and carrying out studies on the needs for intervention, education and retraining programs for persons who engage in conduct that constitutes abuse, for their rehabilitation.

(l) Formulating guidelines on the minimum requirements that must be met by the deviation services contemplated by Section 3.6 of this Act, which must be taken into consideration by the courts in determining deviations.

SECTION 4.2 - CONFIDENTIALITY OF COMMUNICATIONS.
(P.R. Laws Ann. tit. 8 § 652)

The Women's Affairs Commission shall take steps to guarantee the confidentiality of the communications and information it receives from its clients during the course of rendering services to prevent domestic abuse and intervene with its victims. All communications between the persons attended to in the Commission and its personnel shall be privileged and shall be protected by the confidentiality privilege established in the Rules of Evidence of Puerto Rico.

SECTION 4.3 - COLLABORATION BY GOVERNMENT AGENCIES.
(P.R. Laws Ann. tit. 8 § 653)

The departments, offices, bureaus, commissions, boards, administrations, councils, public corporations and their subsidiaries, and other agencies of the Commonwealth of Puerto Rico are hereby authorized to provide the Women's

Affairs Commission with the services and economic resources, personnel, materials, equipment and facilities.

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO
PUERTO RICO POLICE

(LOGO)

Address all your official
correspondence to the
Superintendent
G.P.O. Box 79166
San Juan, Puerto Rico 00936
Tel. 792-1234

To be registered under:
Rules and Procedures to
Attend to Domestic Violence
Incidents

Domestic Violence
Rules and Procedures to
Attend Incidents of

General Order
No. 86-26m (Rev.1)

TO : ALL PERSONNEL

SUBJECT : RULES AND PROCEDURES TO ATTEND TO DOMESTIC VIOLENCE INCIDENTS

V PURPOSE

Domestic violence constitutes a serious attempt against the person and society in Puerto Rico. It frequently ends in intrafamily homicide and it affects all the components of the family, including the children. Statistics reflect that a high percentage of women murdered in Puerto Rico, have died at the hands of the husbands, former husbands, boyfriends, mates and former mates. Hundreds of thousands of Puerto

Ricans of both sexes are the victims of violence at their homes at the hands of persons they love and trust. Children who are the victims of abuse or who come from homes where domestic violence incidents occur, carry throughout lifetimes the wounds and lessons of violence. To tolerate domestic violence today is equivalent to sowing the seed of violence in the future generation.

Domestic violence is one of the most complex criminal acts in terms of its causes and solutions which our society faces. Human and economic relations between victims and aggressors, the feelings this violence generates in the victim (guilt-shame), and the pain and the agony caused by the abuse from the spouse, father or mother, or from a trusted adult, or a child, has a nature very different from the one felt upon receiving the same violence coming from a stranger. For the domestic violence victim, it constitutes a terrible loss to have its home turned into a dangerous place. The justice system shares with the other components of our society, the responsibility of preventing domestic violence acts and to provide proper remedies to the victims of domestic violence. In order to meet that responsibility, the Police Department is hereby issuing this General Order, which establishes rules and procedures to attend to domestic violence.

The purpose of this General Order is to establish the public policy of the Puerto Rico Police and the procedures to deal with domestic violence as criminal conduct against society, as well as to establish that said conduct shall not be tolerated and to assure the domestic violence victims the maximum protection the law and those enforcing it can provide.

VI This Order has the following Sections:

6.1 Legal Grounds
6.2 Public Policy
6.3 Definitions
6.4 Restraining Orders
6.5 Criminal Conduct

6.6 Arrest
6.7 Signature and Oath of a Complaint
6.8 Victim Assistance
6.9 Reports
6.10 Duties and Responsibilities of the Members of the Force
6.11 Responsibilities of the Statistics Division
6.12 General Provisions
6.13 Effectiveness Date

A. Legal Grounds

This General Order is issued under the provisions of the following Acts:

1. Act No. 26 of August 26, 1974 "Puerto Rico Police Act", which grants the Police Superintendent the authority to issue and implement rules and regulations.
2. Act No. 54 of August 15, 1989, known as the Prevention of and Intervention with Domestic Violence Act.

B. Public Policy

The Puerto Rico Police acknowledges that domestic violence is one of the most complex and serious problems our society is facing.

Domestic violence is a criminal conduct which constitutes a crime. As public policy, the Puerto Rico Police, shall proceed to arrest the aggressor in every incident of domestic violence as long as from the facts come forth the existence of elements constituting a crime.

The determination as to the arrest of the aggressor, if there were domestic violence criminal actions, shall not be subject, nor would it be affected by any of the following circumstances:

1. The mediation or any other type of police intervention leading to a conciliation between the victim and the aggressor SHALL NOT be used as a substitute of the arrest.
2. That there is a marriage relation between the aggressor and the victim,
3. Whether or not the aggressor lives with the victim,
4. Whether or not there is a Restraining Order,
5. The financial consequences the arrest of the aggressor would bring forth,
6. The record of prior complaints filed by the victim,
7. Statements by the aggressor as to the sense that the violence had ended and that it would not be repeated,
8. That the blows or strikes suffered by the victim are not visible,
9. The nature of the place where the incident takes place, (whether it is public or private)
10. Speculations as to whether or not the victim shall continue with the case if the arrest were to end up in a conviction,
11. That the victim shows reluctance to have the aggressor arrested.

It shall be public policy for the members of the Force to communicate that domestic violence is a criminal conduct and that the same shall not be tolerated.

C. Definitions

For the purposes of this Order the following terms shall have the meaning stated hereinbelow:

1. "Cohabitation" - means to have a consensual relationship similar to that of spouses.
2. "Serious Emotional Damage" - means and comes forth whenever, as a result of domestic violence, there is evidence that the person

shows in a recurrent manner one or several of the following characteristics: paralyzing fear; feelings of helplessness or despair, feelings of frustration, feelings of insecurity, defenselessness, isolation, week self-worth or another similar conduct, whenever it is the product of reiterated actions or omissions.

3. "Intimidation" - means any action or word which stated in a recurrent manner may have the effect of exercising a moral pressure over the mood of a person, who for fear of suffering some physical or emotional damage, is forced to do any action contrary to its will.

4. "Retraining Order" - means any mandate issued in writing under the seal of a court, in which measures are dictated to any aggressor to abstain from incurring or performing certain acts or behavior constituting domestic violence.

5. "To stalk" - means to have a person under constant or frequent surveillance by its presence at the immediate or relatively close places to home, residence, school, work or vehicle, where the other person may be, in order to impart fear or panic in the mood of a prudent and reasonable person.

6. "Defendant" - means any person against whom a restraining order is requested.

7. "Petitioner" - means any person requesting a court to issue a Retraining Order.

8. "Couple Relationship" - means the relationship between spouses, former spouses, person who are living together now, or who had done so in the past, those sustaining a consensual intimate relation and those who have created any child between them.

9. "Court" - means the first instance court of the General Court of Justice and the offices of the Municipal Judges.

10. "Domestic Violence" - means a pattern of constant behavior of use of physical force or psychological violence, intimidation or Persecution against a person by its spouse, a person with whom it lives or had lived in the past, a person with whom it had create a child, to cause physical damage on its person, its assets or a third party, or to cause it severe emotional damage.
11. "Psychological Violence" - means a pattern of conduct exercised to the discredit or contempt of the personal value, unreasonable limitation to the access or handling of community assets, blackmail, constant surveillance, isolation, deprivation of access to proper food or rest, threat of depriving the person of the custody of children, or destruction of objects valuable to the person, except those belonging to the aggressor alone.
12. "Victim" - means any person object of any action which constitutes domestic violence.

D. Restraining Orders

1. Any person who had been a victim of domestic violence, or of any conduct constituting the crime typified by this Act, or by the Criminal Code of the Commonwealth of Puerto Rico, or by any other special Act, in the context of a couple relationship, could file on its own, through legal representation or by a law enforcement agent a petition to the Court and could request a Restraining Order, without any need for a prior filing of a complaint or charges. Whenever the Court determines the existence of sufficient grounds to believe that party petitioner has been the object of domestic violence, it could then issue a Restraining

Order. Said order could include, but not limited to the following:

a. Adjudication of the provisional custody of the children to party petitioner,

b. Ordering party defendant to vacate the residence it shares with party petitioner, regardless of the right claim thereon,

c. Ordering any of the parties to abstain from molesting, harassing, persecuting, intimidating, threatening or in any other manner interfere with the exercise of the provisional custody over the minors which had been adjudicated to the other party.

d. Ordering party defendant to abstain from entering any place where party petitioner is, when at the discretion of the court said limitation becomes necessary to prevent party defendant from molesting, intimidating, threatening, or in any other manner interfering with party petitioner, or the minors whose provisional custody had been already adjudicated.

e. Ordering party defendant to pay for the support of the minors whenever their custody has been adjudicated to party petitioner or for the minors, and party petitioner whenever there is a legal obligation to do so.

f. Prohibiting party defendant from hiding or removing out of the jurisdiction the minor children of the parties.

g. Prohibiting party defendant from disposing in any manner of assets belonging only to party petitioner, or assets belonging to the conjugal

partnership if any there be. Provided, that whenever it is actions of management of a business, commerce or industry, the party against whom the order is issued shall submit a monthly financial report to the court on its management actions.

h. Ordering any provisional measurements regarding the possession and use of the residence of the parties and on those real estate listed and comprised in Paragraphs 1, 2, 3, 4(a), 5 and 6 of Article 249 of the Civil Procedure Code, as amended, which establishes the properties exempted from foreclosure.

i. Ordering party defendant to pay an economic compensation out of its private estate for damages suffered, caused by the behavior constituting domestic violence. Said compensation could include, but shall not be limited to compensation for moving expenses, repair expenses on the property, legal expenses, medical expenses, psychiatric, psychological, counseling, lodging and other similar expenses, without prejudice of other civil actions to which party petitioner may have a right.

j. Issuing any further order to enforce compliance with the purposes and public policy of the Domestic Violence Act.

2. Any person could request the civil remedies established by this Section for itself, or on behalf of any other person when the latter is suffering any physical or mental disability, in case of emergency or whenever the person

cannot request the same on its own. The right to request the remedies established herein shall not be affected.

3. The court could issue a Restraining Order with a provisional character, Ex-parte, if it were to determine that:
   a. The steps have been taken in a diligent manner to notify party defendant with copy of the summons issued by the court and the petition filed before the court and it has not been successful, or
   b. There is a probability that by notifying party defendant shall provoke the irreparable damage that is being prevented by requesting the Restraining Order, or
   c. Whenever party petitioner shows that there is a substantial probability of immediate abuse risk.
4. Members of the Force must carefully read the Restraining Orders to determine the contents of the Judge's Order and the aspects it addresses.
5. The violation of a Restraining Order shall be punished as a misdemeanor. In case of doubts, the law enforcement agent shall get in touch with the Magistrate or Judge issuing the order.
6. Before arresting a person for violation to a Restraining Order there must be evidence that the same has knowledge of the terms of the Restraining Order. This shall be inferred:
   a. If the aggressor was present in Court when the Order was issued.
   b. If the aggressor was notified of the Order during a prior judicial incident.
   c. If the document itself shows that the aggressor was informed as to its contents.

d. If the victim presents evidence that the order was notified to the aggressor.

7. The police officer may verify the validity of the Restraining Order in the following manner:
   a. The victim can present copy of the Restraining Order, and the officer should verify that the same was signed by the Judge and has the Seal of the Court.
   b. If the Order has been registered at the Police Department.

E. Criminal Behavior

This criminal behavior is typified in five crimes mentioned below:

1. "Abuse" - Any person using physical force or psychological violence, intimidation or persecution on the person of its spouse, former spouse, or on the person he is living or was living with in the past, or on the person with whom it held a consensual relationship, or on the person with whom it had issued children, to cause that person physical harm, or harm those assets the person loves, except those exclusively belonging to the aggressor, or on another person, or to cause serious emotional harm.
2. "Aggravated Assault" - Whenever on the person of the spouse, former spouse, or on the person he is living or was living with in the past, or on the person with whom it held a consensual relationship, or on the person with whom it had issued children, abuse is incurred as typified by this Act, when one or more of the circumstances is present:
   a. The home of the person, or the person where she is sheltering is entered, and abuse is committed there, in the cases of spouses or persons living together

whenever they were separated or there was a Restraining Order ordering the eviction from the residence of one of the parties; or

b. Whenever serious bodily harm is inflicted upon the person, or

c. Whenever it is performed with a deadly weapon in circumstances not having the intention to kill or mutilate; or

d. Whenever committed in the presence of minors; or

e. Whenever committed after a Restraining Order or resolution against the person charged had been issued to the assistance of the victim of abuse; or

f. Whenever the person be induced, urged, or forced to be drugged with controlled substances, or any other' substance or mood altering means of the person or to get intoxicated with alcoholic substances; or

g. Whenever committed and simultaneously incur in child abuse.

3. "Abuse by Means of Threats" - any person who would threaten its spouse, former spouse, or the person with whom it is living, or had lived in the past, or with whom it had held a consensual relation, or the person with whom a child has been issued, with determined harm by the aggressor or on the person of another third party.

4. "Abuse by Means of Restriction of Freedom" - Any person using violence or intimidation on the person of its spouse, former spouse, the person its living with, or had lived with, or with whom it is sustaining a consensual relation, or the person with whom it had issued

children, or that may use a pretext that is suffering, or that anyone of the persons mentioned is suffering from any ailment or mental defect, to restrict its freedom with the knowledge of the victim.

5. "Marital Sexual Assault" - Any person incurring in a non consented sexual relation with its spouse or former spouse, or with the person it is living now or has lived with in the past, or with whom its holding a consensual sexual relation, or with the person with whom it has issued children, in any of the following circumstances:

   a. If it has compelled to incur in sexual conduct by means of the use of force, violence, intimidation or threat of serious and immediate bodily harm; or

   b. If it has annulled or substantially diminished, without its consent, its capacity to resist through hypnotic means, narcotics, depressants or stimulants or similar substances or means; or

   c. If due to illness or mental disability, temporary or permanent, the person were disabled to understand the nature of the act at the time it was performed; or

   d. If the person were forced or induced by means of abuse and/or psychological violence to the spouse or living mate to participate or be involved in an unwanted sexual relation with third parties.

F. Arrest

1. The member of the Force shall perform an arrest, even though there is no warrant, if he

had sufficient grounds to believe that the person to be arrested had committed, even though not it the member's presence, a violation of the Domestic Violence Act.

2. Also a member of the Force may arrest, even though without a warrant, if a Restraining Order issued under the Domestic Violence Act or any similar Act is presented against the person to be arrested, or if it is determined that there is such an order through communication with the proper authorities and has sufficient grounds to believe that the Provisions of the same has been violated.

3. Arrest by a private citizen. The law enforcement officer shall inform the victim and its relatives of the right that a private citizen has to perform an arrest, if a crime is committed in its presence.

4. The law enforcement agent shall accept the arrest performed by private citizens. The officers should not dissuade the victims from performing private citizens arrests.

5. The law enforcement officer shall gather evidence (photographs) at the scene of the events and shall interview the witnesses that could support the filing of charges.

6. In domestic violence cases follow up should be given and supplementary reports rendered as it should be with any other crime.

G. Signature and Oath of the Complaint

1. Notwithstanding the Provisions of Rule No. 5 of the Criminal Procedure Rules, as amended, the prosecutors and members of the Puerto Rico Police shall sign and swear every complaint for violation of the provisions of this act whenever the facts constituting the

crime are known to them by information and belief.

2. In no case where the circumstances indicated above concur, the person who has been the victim of the alleged actions constituting the crime should be forced to sign the complaint.

H. Victim Assistance

1. Every time a member of the Force is intervening with a person alleging being the victim of abuse, it should take all those measures deemed necessary to avoid the possibility of said person being abused again. Among others, it should take the following steps:

a. Medical Treatment

(1) If the person indicates that it has suffered damages, blows or wounds requiring medical attention, even though not visible, the necessary first aid shall be administered, it shall offer the person the necessary arrangement for it to receive the proper medical treatment and shall provide transportation up to a medical service center where it can be seen.

b. Victim Protection

(1) If the person states any concern for its safety, the necessary arrangement should be made to transport it to a safe place.

(2) Whenever the abuse victim would so require, protection shall be afforded by accompanying it and assisting it at all times while the person is taking its personal belongings from its residence, or from any other place where they may be.

(3) It shall counsel the abuse victim on the importance of preserving the evidence.

(4) It shall provide information to the victim about its rights and about the governmental and private services available for abuse victims, including, but not being limited to, the remedies provided under the Protection and Assistance to Victims and Witnesses Act, No. 77, of July 9, 1986 and Act No. 91, of July 13, 1988. Likewise, it shall deliver a copy of a Counseling Sheet for Domestic Violence Victims.

I. Reports

1. The law enforcement officer shall prepare a report on "Domestic Violence Intervention" for each intervention performed, regardless of whether or not criminal charges are filed against the alleged aggressor.

2. Said report shall contain the allegations by the persons involved and the witnesses, the type of investigation performed and the manner in which the incident was handled, statements by the victim as to the frequency and severity of prior domestic violence incidents and about the number of times it has gone to the Police, or before any private or public entity, or public or private person to claim help.

3. The report shall include information related as to whether weapons were used during the incident. In the cases where firearms were used (it shall seize and/or request the cancellation of the license to have and possess firearms in those cases it should be done pursuant to the Weapons Act).

4. The officer shall provide the victim the complaint number. The work units where the re-

ports on "Domestic Violence Intervention" are generated shall maintain a separate file. Those reports shall be of a confidential character.

J. Duties and Responsibilities of the Members of the Force

1. Precinct or District Commanders
   a. shall publish the procedures established herein to all members of the Force under its jurisdiction.
   b. Shall maintain the intervention reports of domestic violence filed separately from other police reports, in order to guarantee their confidentiality as to the identity of the persons involved.
   c. Shall see to that a file is maintain containing the copies of Restraining Orders affecting the residents of its jurisdiction.
   d. Shall assign the necessary resources to offer protection to the party in whose case a Restraining Order is issued.
   e. Shall send no later than the 10th of each month, the domestic violence intervention report to the Statistic Division. They shall be sent separately from other reports, in sealed envelopes.
   f. Shall see to the faithful compliance of the procedures established herein.
2. Duty Officer and/or Command Center
   a. Upon receiving a domestic violence complaint, it shall proceed to:
      (1) Register the complaint and assign a number.
      (2) Immediately dispatch a unit to attend to the complaint. The driver shall be informed as to

the complaint number, incident, person who reported, address, date and time.

(3) Whenever there are resources available, an additional officer shall be assigned for the service to the complaint.

(4) It shall be the responsibility of the duty officer at the districts and precincts, to open a registration card for the Restraining Orders. This card shall contain the following information:

(a) Name of the person requesting the Restraining Order

(b) Name of the person against whom the Restraining Order was issued

(c) Court issuing the Order

(d) Effective date of the Order

(e) Expiration date of the Order

(f) Brief description of the Order

(g) Address of the person who obtained the Order.

This card shall be filed alphabetically by the person's surnames and then the name.

(5) The duty officer shall verify in any domestic violence case, whether or not there is a Restraining Order, if additional information is needed, it shall refer to the files containing the Restraining Orders.

3. Patrol Officer

a. It shall receive the message from the duty officer or Command Center and shall write down the complaint number, badge, date and time of the message.

b. It shall immediately go to the scene of the complaint and shall proceed with caution; if necessary, it shall call for assistance.

c. It shall investigate the case and shall determine whether:

(1) To arrest any aggressor because there are sufficient grounds to believe that a crime has been committed.

(2) To charge the aggressor since it was not present to be arrested, if there are sufficient grounds to support the complaint. (It shall take all the steps at hand to arrest the aggressor). The aggressor shall be summoned to appear at Court.

(3) It shall assist and counsel the victim pursuant to the provisions of Section H of this Order.

d. If as a result of this service, the police officer identifies the commission of a domestic violence crime, it shall prepare, in addition to the form on domestic violence intervention, the following reports as needed:

(1) Type I Crime Report - the crime committed shall complement the report in its totality and shall figure in this report, pursuant to the

provisions of the Domestic Violence report.

(2) Arrest Report - It shall indicate the name of the arrested person and the reasons leading to the arrest, likewise, it shall complement the report in its totality.

(3) Complaint Report - It shall be used to summon the suspect whenever he is not present to be arrested and there are reasons to believe that a crime has been committed.

(4) Domestic Violence Incident Report - This report shall be prepared for any domestic violence incident attended and shall reflect the service rendered, the investigation performed and the counseling offered by the Police. It shall be prepared in any case whether or not files be charged against the aggressor.

e. It shall report on the radio or telephone to the duty officer or Command Center, the action taken and shall notify the time in which it finished attending to the complaint.

f. The distribution of the Domestic Violence Report shall be the following:

Original - Statistic Division
First Copy - Work Unit

g. Form PPR-581 "Domestic Violence Report", in no way substitutes the police reports.

K. Responsibilities of the Statistics Division

1. It shall be the custodian of the originals of the Domestic Violence Intervention reports. Shall keep them in separate files and shall see to their confidentiality, it would only issue copies thereof by a Court order.
2. It shall receive, register and control the "Domestic Violence" reports.
3. It shall prepare monthly and yearly reports from the information contained in the Domestic Violence Report, a copy of which shall be sent to the Commission for Women's Affairs Office of the Governor after being approved by the Superintendent General Provisions.

L. General Provisions

1. The Clerk of the Court shall send copy of the Restraining Order to the police district or precinct of the jurisdiction where petitioner resides.
2. Any word used in this Order in its female sense, shall apply to the male gender.
3. Any case of abuse or negligence against minors becoming known to the Police during a domestic violence incident, shall be handled as provided by General Order 88-2.
4. Whenever it is a Restraining order issued by a Judge in some State of the United States the victim shall be provided protection and the police officer shall proceed to counsel it so as to have that Order validated by a Judge in Puerto Rico.
5. This Order vacates and sets aside any verbal or written communication not in agreement herewith.

M. Effectiveness Date.

This Order became effective on December 1, 1986 in its reviewed form it shall become effective as of November 16, 1989.

(sgd.) ISMAEL BETANCOURT LEBRON, Esq.
Superintendent

PRIMER INFORME DE PROGRESO SOBRE LA IMPLANTACION EN PUERTO RICO DE LA LEY PARA LA PREVENCION E INTERVENCION CON LA VIOLENCIA DOMESTICA

(Ley Nu. 54 del 15 de agosto de 1989)

Pages 5-6

La violencia doméstica es uno de los problemas más serios que confronta nuestra sociedad. En la interacción de un conjunto de variables culturales, sociales e individuales, encontramos las explicaciones para entender las múltipes causas y efectos de este problema.

Las investigaciones y las experiencias de servicios a victimas (y recientmente a agresores) de violencia dómestica, arrojan amplia evidencia que nos permite reconocer y ubicar este problema dentro del no menos extendido y grave situación del violencia contra la mujer. Sin obviar la forma en que otras expresiones de violencia inciden en el cuadro de violencia contra la mujer (en especial, en el de violencia doméstica), es de todos/as conocido que estamos frente a un problema de suma complejidad, enraizado en las relaciones de poder y en la desigualdad entre los géneros.

No es casualidad que la victima mas frecuente en las situaciones de violencia domestica sea una mujer y que el agresor sea un hombre. La violencia domestica no crea la polarización por sexo entre victima y victimario; más bien, se alimenta de las polarizacion ya existente en el entorno sexista de nuestra sociedad. El discrimen contra la mujer permea todas las actividades del quehacer humano y se presenta con mayor crudeza en la convivencia cotidiana de los miembros del grupo familiar, particularmente, entre quienes sostienen relaciones de intimidad.

Por el carácter privado que tiene la vida familiar y por las connotaciones que tiene la violencia cuando se da en esta esfera, conocemos del problema de violencia domestica a traves de sus mas criticas manifestaciones: homicidios, asesinatos, suicidios, agresiones, mutilaciones, secuestros y otros delitos relacionados. Lo que sale a la luz publica y lo que llega a la atencion de los Tribunales, por mas dramatico que parezca, es solo una fraccion de la magnitud del problema de violencia domestica que prevalece en muchos de los hogares puertorriqueños.

La Ley Nu. 54, para la Prevencion e Intervencion con la Violencia Domestica, Ley del 15 de agosto de 1989, representa un cambio fundamental en la manera en que nuestra sociedad observa, entiende y se propone lidiar con este problema y sus consecuencias. Al reconocer las limitaciones y la relativa incapacidad de las instituciones sociales para prevenir y resolver el problema, la Ley establece remedios civiles y criminales, asi como responsabilidades afirmativas que deben contibuir al cese energico repudio de esta conducta violenta.

Page 37

Sexo de Victimas o Querellantes

En 1988, de las 9,260 victimas de violencia domestica que acudieron a la Policia, 8,978 (97%) fueron mujeres, mientras que 287 (3%) fueron hombres. En 1990, de las 15,594 victimas que acudieron a la Policía, 14,815 (95%) fueron mujeres y 780 (5%) fueron hombres. La proporcion de mujeres victimas o querellantes de violencia domestica disminuyo en un 2% y en esa misma proporcion aumento el numero de hombres victimas o querellantes por violencia domestiica al comparar las datos de 1988 con los del ano 1990. Los datos comnfirman que la victima o querellante tipica en casos de violencia domestica es la mujer (aunque no es la victima exclusiva, como es el caso de la victima de

violacion sexual, de acuerdo a como se tipifica en nuestro Codigo Penal).

****

"No existe duda de que el proposito de la referida Ley va dirigido al fortalecimiento de la familia puertorriquena, sin embargo, nuestra Agencia confronta dificultades para la implantacion de la misma, toda vez gue dependemos de otras agencies para llevar a cabo el procedimiento completo. Cabe senalar ademas, que los casos de violencia domestica generalmente ocurren durante horas de la noche, los fines de semana y los dias festivos; lo que dificulta aun mas la solucion de los mismos con la prontitud que amerita cada caso en particular."

Otras experiencias, dificultades, opiniones y critical expresadas por funcionarios de la Policia con respecto a diversos aspectos de la implantacion y contenido de la Ley son las siguientes:

****

"Entendemos la responsabilidad y preocupacion de la entidad que usted dirige la Comision para los Asuntos de la Mujer, no obstante, tenemos presente que por ser este problema uno de tipo familiar,necesita mas atencion en lo social que en lo criminal."

****

"No contamos con hogares para albergar victimas cuando la situacion lo requiere."

****

"En la mayoria de los casos, luego de que se hacian todos los tramites correspondientes para someterlos al

Tribunal, las personas perjudicadas le manifiestan al juez que no tienen interes en el caso, por lo que se ordena el archivo. La Policia consume mucho tiempo en las intervenciones de estos caves, por lo que la vigilancia preventiva se afecta seriamente."

****

"La Ley 54 de Violencia Domestica se creo con el proposito de poner limite a las agresiones conyugales. Sin embargo, no es menos cierto que desde que se creo la Ley, los casos de violencia hen ido en aumento. La policia al tratar de hacer cumplir esta Ley, se ha encontrado con un sinnumero de problemas que en vez de mejorar el sistema, lo que ha hecho es empeorarlo."

****

"El problema que esta Ley representa en nuestra Area Aguadilla es mayormente operacional debido a lo limitado de los recursos."

****

"Estos casos nos consumen gran cantidad de horas en los tribunales, y en un momento como este donde no hay suficiente personal [Aibonito]."

****

"...es de suma importancia que nuestras sugerencias y opiniones sean tomadas en consideracion por entender que son muy pocos los casos que llegan a juicio en su fondo. Nuestros principales problemas, al igual que el de nuestra agencia, en general lo son el personal y el equipo..."

****

"Entendemos que el proposito de la Ley 54 no ha logrado su objetivo. Continua el maltrato conyugal. Esta Ley en vez de unir al nucleo familiar ha sido lo contrario. Una vez se aplica la Ley, estas personas quedan afectadas en forma negative -hijos, suegros y esposos-. Economicamente se afecta el nucleo familiar. La relacion paternal se afecta. Al implantar la Ley no hay flexibilidad de la Policia para tomar medidas de reconciliacion familiar."

****

"Le informo que en este Distrito [Cayey] hemos tenido problemas con la implementacion de esta Ley ya que no tenemos el personal suficiente para poder cumplir a cabalidad con esta Ley. ...Otro problema que existe es que luego que se levantan los expedientes en la Fiscalia los perjudicados no tienen interes en continuar los casos. Esto es una perdida de recursos ya que se...

IN THE UNITED STATES FEDERAL COURT
FOR THE DISTRICT OF PUERTO RICO

- - - - - - - - - - - - - - - - -

FLOR MARIA SOTO,
Plaintiff,

-against-

LUIS CARRASQUILLO; CARLOS FLORES; ISMAEL BETANCOURT LEBRON, JOHN DOE, X, Y, Z...,

Defendants.

- - - - - - - - - - - - - - - - -

Civil No. 93-1594HC

JURY TRIAL DEMANDED

AMENDED COMPLAINT

TO THE HONORABLE COURT:

COMES NOW PLAINTIFF through the undersigned attorneys and respectfully prays as follows:

1. This is a civil action seeking damages against defendants for committing acts under color of law, which deprived plaintiff of rights secured by the Constitution and laws of the United States and of the Commonwealth of Puerto Rico; for conspiring with the purpose of covering their noncompliance with their duties as stated in the Law for the Prevention and Intervention with Domestic Violence, 8 L.P.R.A. §§ 601 et seq., with intent to deny plaintiff due process and equal protection of the laws; and for refusing or neglecting to prevent such deprivations and denials to plaintiff. The Court has jurisdiction of this action under 42 U.S.C. Sec. 1983 and 28 U.S.C. Sec. 1343.

2. The jurisdiction of this Court is further invoked pursuant to 28 U.S.C. Sec. 1331.

3. This Court's supplemental jurisdiction is also invoked pursuant to 28 U.S.C. Sec. 1367 over those causes of action arising under Section 1802 and 1803 of the Puerto Rico Civil Code and under the Constitution of the Commonwealth of Puerto Rico.

4. Plaintiff Flor M. Soto is a resident of the Commonwealth of Puerto Rico and a citizen of the United States, and is sole heir of her deceased children.

5. Defendants Luis Carrasquillo and Carlos Flores were at all times material to this Complaint duly appointed officers of the Police Department of the Commonwealth of Puerto Rico.

6. Defendants John Doe, X, Y, and Z were at all times material to this Complaint duly appointed police officers of the Police Department of the Commonwealth of Puerto Rico.

7. Defendant Ismael Betancourt y Lebron was at all times material to this Complaint the Superintendent of the Police Department of the Commonwealth of Puerto Rico.

COUNT I

1-7. Plaintiff alleges and realleges Paragraphs 1 through 7 as Paragraphs 1 through 7 of this Count, with the same force and effect as if fully set forth herein.

8. At all times material to this action, the defendants Luis Carrasquillo, Carlos Flores, Ismael Betancourt Lebron, John Doe X, Y, and Z were employed as law enforcement officers of the Police Department of the Commonwealth of Puerto Rico, were acting in their official

capacities and their acts were performed under color of state law, custom and usage.

9. On or about April 17, 1991, plaintiff visited the Rio Grande police station after receiving noticeable hard beatings from her husband. She was attended by codefendants Carrasquillo and Flores who took notes on what she told them and made her sign a document. The mentioned officers offered the plaintiff to stay at the police quarters. At that time, plaintiff declined the offer and mentioned to codefendants that she was moving to her mother's home with her children.

10. On or about April 19, 1991, plaintiff's husband appeared anxious and worried at the home of plaintiff's mother. He asked plaintiff once and again not to imprison him as policeman Flores told him she would do and to go back to their home with him. Plaintiff answered that their separation was definite and denied she wanted to imprison him. Plaintiff's husband then requested to have the children during the weekend.

11. On Sunday, the 21st of April, 1991, plaintiff went to her husband's home to pick up her children. While waiting downstairs at the front of the house she heard her daughter shouting and afterwards three gunshots. Plaintiff's husband had shot to death her eight year old daughter and two and a half year old son, and then killed himself. When the house was opened the following messages were found written in the walls of the room where the shootings occurred: "Ley que sólo sirve para que las mujeres chantajeen a los hombres," "el Policia Flores me dijo que me ibas a meter preso..." which in English is: "Act 54 is only useful for the women to blackmail men," "Policeman Flores told me that you were going to imprison me."

12. Plaintiff timely interrupted the prescription period of one year when she claimed in written [sic] the compensation of her damages to codefendants. The letters

were timely delivered to defendants within the year of the shooting. A copy of the signed receipt for each of the letters delivered is attached as Exhibits to the Complaint.

13. Although codefendant Luis Carrasquillo was on vacation the day the letter was to be delivered to him, in person, plaintiff states that codefendant acted as a joint tortfeasor. Plaintiff also asserts that because the conduct of defendant Carrasquillo amounts to a conspiracy with policemen, Flores' prescription period was timely interrupted with Flores' notice.

14. Defendants' breach of law enforcement and Domestic Violence Act duties violated plaintiff's civil rights and resulted in severe injuries and wrongful death for which damages and other relief is sought. Defendants' acts and/or omissions constituted gross negligence and/or intentional indifference and/or reckless disregard of the Constitutional and civil rights of plaintiff.

15. Defendants have a custom, policy and practice of treating complaints from, or on behalf of, women threatened with violence in domestic disputes differently from other complaints of violence. Defendants have [also] discriminated on the basis of the sex of the complaining victim. This custom, policy and practice violated plaintiff's rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. Sec. 1983.

16. The intentional indifference and/or gross negligence and/or reckless disregard by defendants Flores and Carrasquillo of their statutory and law enforcement duties has deprived plaintiff of a substantive due process life interest and of her rights under 42 U.S.C. 1983 to equal protection of law.

COUNT II

1-11. Plaintiff alleges and realleges Paragraph 1 through 11 of Count I as Paragraphs 1 through 11 of this Count, with the same force and effect as if fully set forth herein.

12. The official report of plaintiff's complaint at the Rio Grande police quarter is titled "Orientation". The contents of the report acknowledge that what co-defendant officers had before them was a domestic violence situation. Notwithstanding no domestic violence report was ever prepared nor the treatment conferred to the plaintiff and/or the situation was ever that of a domestic violence one. Codefendants chose to give information to the aggressor who was known to them personally rather than following the Domestic Violence Act of the Commonwealth of Puerto Rico.

13. Defendants' illegal intervention in the domestic violence situation brought before them by plaintiff and ulterior preparation and manipulation of the official reports amount to a conspiracy to cover their non compliance with the Domestic Violence Act with the purpose of depriving plaintiff of the equal protection of the law under 42 U.S.C. Sec. 1985(3). In the alternative, defendants Flores and Carrasquillos' conduct amounts to conspiracy to deprive plaintiff of her constitutional and civil rights in violation of Section 1983 of the Civil Rights Act.

14. Defendant John Doe and others not known to plaintiff knew or should have known of the co-defendants' acts in not enforcing adequate disciplinary measures or procedures against them, participated in the conspiracy to deprive plaintiff of her rights under the Constitution of the United States.

COUNT III

1-11. Plaintiff alleges and realleges Paragraph 1 through 11 of Count I as Paragraphs 1 through 11 of this Count, with the same force and effect as if fully set forth herein.

12. Defendants John Doe X,Y and Z were at supervisory positions and knew or should have known of the lack of compliance of codefendants Carrasquillo and Flores with the Domestic Violence Act and police conduct standards.

13. Defendants John Doe, X, Y and Z had power to prevent or aid in preventing the commission of said wrongs, [and] could have done so by reasonable diligence, and knowingly, recklessly, or with deliberate indifference and callous disregard of plaintiff's rights failed or refused to do so.

14. In failing to adequately discipline and supervise such codefendants John Doe, X, Y and Z, directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of defendant police officers heretofore described and acted with callous disregard toward plaintiff's rights. Codefendant John Doe's acts caused the deprivation of plaintiff s rights secured by the Fifth and Fourteenth Amendments to the Constitution of the United States.

COUNT IV

1-11. Plaintiff alleges and realleges Paragraph 1 through 11 of Count I as Paragraphs 1 through 11 of this Count, with the same force and effect as if fully set forth herein.

12. At all times relevant to this Complaint, defendants Carrasquillo and Flores, as police officers of the Commonwealth of Puerto Rico Police Department were acting under the direction and control of defendant Ismael Betancourt Lebron.

13. Acting under color of law and pursuant to official policy or custom, defendant Betancourt Lebron knowingly and/or recklessly and/or with deliberate indifference and callous disregard of plaintiff's rights, failed to instruct, supervise, control and discipline on a continuing basis, defendant police officers in their duties to comply with the Domestic Violence Act of Puerto Rico, Act. No. 54 of 1989 and to refrain from depriving plaintiff of her constitutional and statutory rights, privileges, and immunities.

14. Defendant Betancourt Lebron had knowledge or, had he diligently exercised his duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs done, as heretofore alleged, were about to be committed. Defendant Betancourt had power to prevent or aid in preventing the commission of said wrongs, [and] could have done so by reasonable diligence, and knowingly, recklessly, or with deliberate indifference and callous disregard of plaintiff's rights failed or refused to do so.

15. Defendant Betancourt, directly or indirectly, under color of law, approved and/or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of defendant police officers heretofore described.

16. As a direct and proximate cause of the act[s] of defendant Betancourt, plaintiff suffered severe mental anguish in connection with the deprivation of her constitutional and statutory rights as guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States and Sec. 1983 of the Title 42 of the United States Code.

COUNT V

1-11. Plaintiff alleges and realleges Paragraph 1 through 10 of Count I as Paragraphs 1 through 10 of this

count, with the same force and effect as if fully set forth herein.

12. Plaintiff alleges and realleges Paragraph 12 of Count II as Paragraph 12 of this Count

13. Acts of codefendants Carrasquillo, Flores, Betancourt Lebron, John Doe, X, Y and Z, represent negligent acts actionable under Section 1802 of the Civil Code of Puerto Rico.

14. The negligent management of the domestic violence situation presented to codefendants Carrasquillo and Flores by plaintiff caused the killings of plaintiff's children.

15. As a consequence of all codefendants' negligent acts or omissions, plaintiff suffered severe damages including but not limited to the loss of the company of her son and daughter and severe emotional and psychological damages. She also claims the damages inherited from her children for the same negligent acts described throughout this Complaint.

CONCLUSION

WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, for compensatory damages in the amount of $15,000,000 and further demands judgment against each of the defendants jointly and severally, for punitive damages in the amount of $15,000,000, plus the attorneys fees and costs of this action pursuant to 42 U.S.C. Sec. 1988. Plaintiff also demands judgment against defendants for such other relief as to this Court seems just, proper, and equitable.

RESPECTFULLY SUBMITTED.
In San Juan, Puerto Rico this 22 day of June of 1993.

Alfredo Márquez Morales, Esq.

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U.S.D.C. No. 205107
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FLOR MARIA SOTO,

Plaintiff,

-against-

CIVIL NO
93-1594 (HL)

LUIS CARRASQUILLO; et. al,

Defendants.

DECLARATION UNDER PENALTY OF PERJURY

I, YOLANDA ZAYAS, of legal age, married, and resident of San Juan, Puerto Rico, under penalty of perjury declare:

1. I was Executive Director of the Women's Affairs Commission during 1988, through June, 1993.

2. The Commission is in charge of promoting women's rights. In accordance with Puerto Rico's domestic abuse statute, our duty was to get government agencies related in any way to its implementation, to promote education on women's rights, to develop strategies to encourage government agencies to respond to the needs and demands of domestic violence victims to be protected.

3. As Executive Director of the Commission I had to deal with the Police Department when Mr. Ismael Betancourt was Chief Superintendent of the corps. During

my direction of the Commission, I directly participate in the approval of Law 54, whose main purpose, as it is declared in its preamble (Exposición de Motivos), was to protect women who were the main victims of domestic violence. In the Commission's first report, dated June, 1991, the statistics revealed that between January and June 1990, from a total of 6,725 domestic violence victims, 6,386 were women (95%) and only 339 (5%) were men. See page 39 of the Commission's First Progress Report of the Implementation in Puerto Rico of the Law for the Prevention and Intervention with Domestic Violence. A total of 1,377 of the female victims (6,386) were between the ages of 20 to 24. The plaintiff's age group represents 21.6% of the total female victims, and 20.48% of the total (6,725) domestic violence victims.

4. The Police Department did not compile the arrest rates, whereby it was not possible for the Commission to compare arrests rates among the sexes.

5. Due to the terrible situation in which women victims of domestic violence were, and the Police's lack of will, intention and purpose to implement the law, I, on behalf of the Commission wrote letters and made innumerable phone calls to Mr. Betancourt, none of which he returned.

6. Not only he refused to open the Police Department to the Commission's efforts to have its corps oriented, but in June 1990 he made public statements, against Law 54. I personally heard his statements. It is not true that he limited his statements to amend the law. He stated that Law 54 promoted domestic violence, that in some cases it destroys Puerto Rican households, that some Policemen did not want to intervene in domestic violence because they felt the women were in need of psychological and psychiatric assistance. The Commission with other women's rights organizations condemned his outcry, which we deemed outrageous and would promote rank and file's negative

attitudes toward women victims and their rights under Law 54. If the Chief of Police expressed despitefulness, the members would not feel any responsibility to respond to Law 54's victims, just as happened in Flor Maria's case.

7. On the other hand, contrary to what Ismael Betancourt declared, all the seminars and training support to the Police Department were not held before April, 1991, when the facts alleged in this complaint occurred. All the training, seminars and educational efforts to high level officials and rank and file [were] initiated in 1992, long after the facts in this case occurred, and three years after they had to be initiated. These efforts occurred only after we demanded the Governor's intervention.

8. I can affirm that policemen Carrasquillo and Flores' statements, that their resistance to implement Law 54 was due to paper work, wasteful court time, and other administrative justifications, were only mere excuses hiding sex oriented discrimination against women, because traffic accidents, minor aggressions, and drug cases demanded paperwork and court time to which they had no administrative excuses, bias, or prejudices to attend as police officers.

In San Juan, Puerto Rico, this 9th day of February, 1995.

YOLANDA ZAYAS
Declarant

TRANSCRIPCION OFICIAL DE PROCEDIMIENTOS ANTE

U.S. DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

SAN JUAN, PUERTO RICO

RE:
CASO NO.
FLOR MARIA SOTO, CIVIL NUM.: 93-1594 (HC)

Demandante,

Vs.

LUIS CARRASQUILLO; CARLOS FLORES; ISMAEL BETANCOURT LEBRON; JOHN DOE; X,Y,Z,

Demandados.

TOMA DE DEPOSICION DEL
LCDO. ISMAEL BETANCOURT

LUGAR: RIO PIEDRAS, PUERTO RICO
FECHA: 26 de septiembre de 1994

Crespo & Rodriguez, Inc.
Esenotipistas de Record
PO BOX 362361 - Tel.: 763-8018
SAN JUAN PR 00936-2361

Betancourt Deposition Translation
Page 4

Ms. Ramon:

For the record this is the Attorney Mabel Ramón Milián from the Department of Justice in representation of former Police Superintendent Ismael Betancourt Lebrón, and Justice in representation of former Police Superintendent Ismael Betancourt y Lebrón, and Officer Carlos Flores, in the matter of Flor María Soto versus Luis Carrasquillo, pending before the Federal Court in Puerto Rico, case number 93-1594, before Judge Lafitte.

Today we will be taking the deposition of Psychologist Mercedes Rodriguez,and present here are also the attorneys for the Institute, Attorney Janet Gutiérrez and Attorney Gary Broida.

Mr. Broida:
All of that...

Ms. Ramon:
No, no true. I will take it in English.

Mr. Broida:
Speak in English from the beginning and then...

Pages 39-44

and the Governor, no one knew. But those are exceptions... I say exceptions because when the ca... the information gets to the Superintendent, and the Superintendent knows that the situation is so dramatic that he needs to intervene. There are other cases in which the information gets to the Superintendent in inspection, the assistant, and he processes it, of course, if he understands that it is a critical matter, as it happened with the University... Canina processes it

immediately to the Superintendent. If understands that it can wait he prepares his report, passes it on to the Chief of the Legal Division, who evaluates it, and he in turn passes it on to the Superintendent.

Q: It is your understanding that this was to be foreseen that police officers would face difficulty in implementing the specific procedure in Law 54 since it was somewhat different than the standard procedure followed at ... in relation to the other criminal offenses?

A: Yes, definitely, it could be foreseen and I venture to say that because of the numerous meetings that I had with Headquarters concerning this, with which they still have problems, notwithstanding all the talks that we gave, notwithstanding that the Commission intervened together with me, from the meetings that I held with Attorney Zayas and her work team: because of two reasons, number one, sometimes a difficulty in understanding the law, and number two active resistance on the part of some members from the Force concerning the law. And I believe that resistance still exists.

Q: Did you detect that resistance when you were Superintendent?

A: Oh yes, of course, it is detected a whole lot easier, as it is also detected in some areas when dealing with certain types of crimes. And I dare say, for example, and I say it with some sadness -- and it's been some years since I've had this perception-- when dealing with the crime of number racketeering ("bolita") it turns out to be much more difficult in the western are of Puerto Rico...

Q: Uh-huh.

A: ...than to deal with it in San Juan, there is resistance. What factors influence that? Well, there are quite a few, among them, well, obviously, acts of corruption.

Q: Do you remember particular sectors where there was a higher resistance within the police force?

A: Well that...

Q: Particular areas of geographical regions.

A: I don't remember... That is the only area where I had to call the Area Commander on more than one occasion to say to him, "I don't care if the police officers are left without ... the street without police officers, but there has to be enforcement, was in the Caguas area because at the beginning, specifically in the Commander's Office in Cidra, there was some resistance, but there were other areas in the Area Commander was engrossed, for example, in Bayamon, the Area Commander believed so much, so much, in the law that he personally would give it a follow-up. I say this because I used to have to meet with them...

Q: Uh-huh.

A: Yes, well the first thing we did was, obviously, the first thing we did was to adopt amended General Obligation Order 8616 Revision One. As I already stated, during the revision process of that order I was helped by the State Attorney Rivera Caratini, a State Attorney with very much experience, very well know right now in the area of Family Relation and Family Affairs, and who was one of the persons whom I trusted most in the San Juan Attorney's Office, as well as State Attorney Domenech. That order was the product of intense work; it took us three or four months to search for alternatives. Search over there, ask the area commanders for idea,whom we involved at least in the initial process for the information and simultaneously with the order, we prepared a simplistic form, an informative booklet on domestic violence, which is this one I have in my possession, that had the aim of informing the Force and the community that the law existed. Thousands of those booklets were published and they were distributed...

Q: Do you remember the date, more or less, when that was?

A: Yes well the...

Q: Approximately.

A: ...the order was reviewed on November 16, of '89, that is, it is the date it bears and simultaneously, both things were done simultaneously... the booklet bears the date December 1989, so it was more or less simultaneous. This was the first measure taken under my direction, a process in which I actively participated with those two state attorney. Why those two state attorneys? Well because of the trust I had in them, and from past experience a lot of experience handling real cases in...court when I directed the San Juan State Attorney's Office. There is...

Page 78

terms of what was understood in... the Commission could have understood is not necessarily the same. In fact, after those statements, the Commission and I worked as a team the entire time and it was after this that the seminars were produced in which apparently someone had misunderstood what I had said. That, what I said to the person, and I repeat, is that the law had not worked like we had expected so as to stop this, but rather, that it had continued to increase in view of the data that I was receiving from the area commanders and the statistics division, d'you see? And I said it because I was seriously concerned I believed that additional measures had to be taken and I think they have to be taken also in view of the information that might be coming out.

Q: I'm going to give you...

A: Uh-huh. the...

Q: ...another newspaper clipping.

A: Yes.

Q: This is one from EL VOCERO

A: Uh-huh.

Q: ...from July 10, 1990, and it would be our Exhibit 10.

A: Uh-huh.

Q: With that one I will give you time to...

Q: What...? Pardon, the interruption.

A: Oh sorry, sorry, sorry.

Q: What was the use given within the Force to the booklet on domestic violence?

A: Yes, well it was used in conjunction with the law, many copies of the law were made; at the seminars we gave at the Academy level and at the...General Headquarters level, in the auditorium at Headquarters because we held seminars for the area commanders, for the unit chiefs, and there were seven seminars held for a group of police officers that had been preselected in conjunction with the Commission in a program we had agreed to with the Commission and that one was held at the Academy. That is, I cannot say that one hundred percent of the Force attended those seminars because that would be deceiving ourselves. What we did was that we chose the directing personnel with the condidi... with the obligation that [sic] would take the message to the subordinates, and we were dealing with the Commission that we came across the same problem, then we made a selection taking into consideration the police officers that would typically be intervening with this type of crime in the different areas by assignments.

Pages 14-20:

Q: What was your opinion of the recently enacted Law 54, what was your opinion regarding it?

A: Well, the opinion was and continues to be that the law is very good, except that I have insisted that additional judicial mechanisms should be integrated, but I believe that the law served an intention even when what we have before us itself demonstrates that it has not been sufficiently effective in stopping this problem, which is a serious problem. That is, it is a problem to which I attribute a major priority in this country. I believe... For me, as a district attorney and as Superintendent, there were three critical problems that needed to be addressed, the problem of attacks against women, which has no name for it, the problem of attacks on children and the problem of police corruption which were three priorities which I always had in the police and obviously I had it at the district attorneys office. At the district attorneys I was somewhat stubborn because the problem was so critical that I was the only district attorney that refused to file these cases when women were charged. I, on one occasion Luis Folacin had to give me an order to file something because my attitude was stubborn, don't file the cases, it has to be seen, because this had to be stopped in some form. Unfortunately, it has not happened this way.

Q: Your opinion regarding the... for this then...

A: Yes.

Q: ...we are talking about the moment...

A: Yes.

Q: ...when you...

A: Yes.

Q: ...in which... let us say, the law is passed,...

A: Yes.

Q: ...your opinion regarding the need for other mechanisms, that other mechanisms be included in addition to those that are included in the law, where they based on some literature, on some fact or some experience formed through the years?

A: Yes, me personally, and this I have discussed on many occasions, in many venues, I believe that the law should be promoted in some form to some...some of the mechanisms which exist in the civil code, the provisional methods in the civil codes. My idea is that whichever mechanism is applied must be judicial, it cannot be left to the actions nor can it be left to any... it has to be a judicial alternative. When... I did not say that, I forgot...

Q: Uh-Huh.

A: ...I had two very nice years experience as the assistant director of the San Juan Legal Services, an experience that had nothing to do with the district attorneys.

Q: Uh-Huh.

A: ...and where we worked alot on these problems, especially in the public housing, and we often used the provisional methods, subpoenas, in a coercive form to get results and at least the experience that I had those two years was that we were able to greatly reduce the problems of husband and wife, but using the courts as a mechanism. But in the San Juan Legal Services, we had social workers and psychologists that helped us and that was fundamental because that is not the typical work of lawyers unless one has expertise in that area and I have always believed that much more can be done than what is being done. And I go further than that, I believe that of the 160 million dollars that was

raised in funds for the police a significant part should have been raised to improve that law and that was not done.

Q: But are you aware that in reality the law provides for mechanisms... for those provisional mechanisms including therapeutic alternatives for the aggressors...

A: Yes, but really the law...

Q: ..technically and by judicial avenue.

A: But really the law is conceived in terms of those mechanisms for the aggressor after conviction and I believe that... and the law is clear, it speaks of the convicted aggressor. I believe that much can be done in cases in which there has not yet been aggressions from side to side, but where problems already flourish which will develop into aggressions. Well, I had the problem... I had a very personal experience with a woman police officer, which is very rare, she had an order... the husband had an order of protection, she was the aggressor and it was a case which received alot of notoriety because the chief of police of the Fortaleza made her live alone in the Fortaleza, with two little girls, that when I learned of this I went to find the woman and I dealt with this problem of the little girls. And I am convinced that in that case in particular, having intervened, having dealt someone with much... with some experience in this would have avoided that problem, that we avoided it with three meetings in my office, me, and I am not an expert, but that we could have avoided it because it was not so serious for it to get to the extreme that it got, do you see?

Within the police, for example, we try to avoid something, that...that program already failed, dealing with the police that drink too much rum, that police have a serious problem with cases of drunkenness and we designed a program with an expert professor, professor Nelly Morales, some workshops for these persons with their women and that helped a great deal. I believe that those programs in Puerto

Rico must be given greater attention and that has been my vision, that the law is terrific?, terrific, but there must... in Puerto Rico we must begin to emphasize preventive methods and here we do not give this emphasis, here we emphasize only the punitive method and I personally believe that we must work with prevention.

Q: That is very true. But do you realize that that very theory... that very...

A: Ah-Hah

Q: ...type of theory...

A: Uh-Huh

Q: ...could also be valid in situations such as crimes relating to drugs, where it cannot be depended on the voluntariness of the offender and we are all in agreement that it would be worthwhile to invest in methods for prevention, but certainly since it depends on the voluntariness of the offender, well that is impossible, so it is not until the moment that a conviction appears that other alternatives are considered?

A: Yes, what happens is that in the case of drugs Puerto Rico's public policy has traditionally been to put drug users in jail, but there are not specific programs here, except two that we initiated in the police, that have also been eliminated, to deal with children three years and older and all the psychologists in the United States coincide, and I believe that that is public knowledge, that the early development of children in terms of their conduct, is between three and six years of age and here there is nothing for the children and a great deal of those 3, 4, 5 and 6 year old children, that end up taking drugs and also end up seeing daddy and mommy fighting, they also end up becoming abusers of mommy, of daddy and of the daughter, especially in public housing. And I believe that we must begin to deal with that and that it can be done.

Q: And you are aware that all of the literature...

A: Uh-Huh

Q: regarding the study of the cycle of family violence favors methods like those that our Domestic Violence Law contains to reduce the incidence of domestic violence cases?

A: Oh, no, yes, yes, I am in agreement that the law should be working even better than it is, nevertheless experience demonstrates that it is not like that. The last clip of last week's El Nuevo Dia newspaper, September 24, that I have on me, says: "Domestic Violence causes continue increasing" and the report that the Secretary of Justice just completed last week anticipated officially reveals that this year there are 20 percent more domestic violence cases than last year. I wish to say that there is a shortcoming and we are not addressing this shortcoming. I believe that yes, that the punitive method is working, but that it must be accompanied with other methods, si?, that has been my position, but that it must, that it works like this and that the police have the obligation to take it to its final consequences, also, that has been my politics and my politics as Superintendent, without any ... What I always believed is that additional alternatives should be looked for to improve a law that is good, but that can be improved.

No. 96-1976

Supreme Court, U.S.
FILED
JUL 14 1997

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

FLOR MARIA SOTO,

Petitioner,

—v.—

CARLOS FLORES, ISMAEL BETANCOURT y LEBRON, and JOHN DOES X, Y, and Z,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PUERTO RICAN BAR ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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18 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

I DOMESTIC VIOLENCE CRIME IS A NATIONAL EPIDEMIC THAT APPROPRIATELY REQUIRES ASSISTANCE OF TRADITIONAL CIVIL RIGHTS FEDERAL REMEDIES TO REDRESS IMPROPER STATE LAW ENFORCEMENT AND GENDER DISCRIMINATION 3

A. Domestic Violence Crimes Disproportionately Affect Women Nationwide 3

B. Federal and State Legislation Has Been Enacted to Address The National Domestic Violence Crisis 4

II THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY SUMMARY JUDGMENT AND SUFFICIENCY OF PROOF REQUIREMENTS IN DOMESTIC VIOLENCE DISCRIMINATION CASES THAT IMPLICATE CONSTITUTIONALLY PROTECTED RIGHTS 6

A. Victims of Discrimination in Domestic Violence Cases Must Be Assured Access to Federal Courts 6

B. Petitioner Presents a Valid Claim Under 42 U.S.C. § 1983 6

C. Petitioner Was Denied Equal Protection Under the Law 8

D. Petitioner Was Denied Due Process 9

III THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE CONTOURS OF THE QUALIFIED IMMUNITY DOCTRINE 10

A. Respondents' Unconstitutional Behavior is Not Shielded by Qualified Immunity 10

B. Respondents' Unconstitutional Behavior Constituted State Created Danger Under Clearly Established Law 11

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

STATUTES

42 U.S.C. § 1983 ..... 1, 6, 7

P.R. Laws Ann. tit. 8, § 601 (1991) 5

CASES

Anderson v. Creighton, 483 U.S. 635 (1987) 10, 11, 12

Balistreri v. Pacifica Police Dep't, 901 F.2d 696 (9th Cir. 1990) 8

DeShaney v. Winnebago Dep't of Social Servs. 489 U.S. 189 (1989) 9

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 10

Hynson v. City of Chester, 864 F.2d 1026 (3d Cir. 1988) 8

Mitchum v. Foster, 407 U.S. 225 (1972) 7

Soto v. Flores, 103 F.3d 1056 (1st Cir. 1997) 7, 8, 9, 10, 11

Watson v. City of Kansas City, 857 F.2d 690 (10th Cir. 1988) 9

Wyatt v. Cole, 504 U.S. 158 (1992) 7

MISCELLANEOUS

Developments In the Law - Legal Responses to Domestic Violence, 106 Harv. L. Rev. 1499 (1993) 4, 5

U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Selected Findings, Violence Between Intimates: Domestic Violence*, NCJ 149259, November 1994 ..... 3, 4

Ronet Bachman, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Violence Against Women: Domestic Violence*, NCJ-154348, August 1994 3

Jenny Rivera, *Puerto Rico's Domestic Violence Prevention and Intervention Law and the U.S. Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 Columbia Journal of Gender and Law 80 (1995) 4, 5

INTEREST OF AMICUS CURIAE[1]

The Puerto Rican Bar Association ("PRBA") is a nonpartisan, not-for-profit membership organization incorporated in 1957 under the laws of the State of New York. The membership consists of approximately 1,000 attorneys and law students, predominantly of Hispanic heritage, from the New York, New Jersey, and Connecticut area. One of the central missions of the PRBA is to comment on and, where necessary, to use legal mechanisms to protect against civil rights violations.

In June 1996, the PRBA formed the Domestic Violence Project (the "Project") to examine and address the issue of domestic violence fatalities, particularly as this tragedy affects the Hispanic community. Among its goals, the Project seeks to remedy violations of constitutionally protected rights of victims of domestic violence. Foremost among legal mechanisms available against state officials who abuse the power entrusted to them are the sanctions available under 42 U.S.C. § 1983.

This is the first time the PRBA appears before this Court as amicus to seek redress, under 42 U.S.C. § 1983, for violations of federal civil rights in the context of domestic violence.

STATEMENT OF THE CASE

The pertinent facts are fully set forth in the opinions of the United States Court for the District of Puerto Rico and the United States Court of Appeals for the First Circuit, and are summarized in Petitioner's Statement of the Case in her Petition for a Writ of Certiorari.

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[1] Letters of consent have been lodged with the Clerk of the Court pursuant to Rule 37.2

SUMMARY OF ARGUMENT

Combating the problem of domestic violence is at the forefront of the national agenda. Recent federal and state legislation and increased federal funding for law enforcement and community programs are just part of new and aggressive initiatives. New initiatives are particularly necessary where, as in our society, women are disproportionately affected by domestic violence and related fatalities. Amicus underscores the need for federal courts to carefully consider the overriding public policy issues, raised on a daily basis, by domestic violence crimes, and urges this Court to recognize and affirm the crucial role of § 1983 in ensuring effective enforcement of the constitutional rights implicated by affirmative interference with domestic violence law.

Sadly, this case illustrates that persistent and pernicious gender bias and discrimination against female victims by state enforcement officials remains a primary impediment to aggressive enforcement of domestic violence laws. Petitioner's children were viciously murdered by their father because of gender discrimination by state officials who affirmatively facilitated the egregious violation of statutory and constitutional rights presented by this case.

In seeking redress in the federal courts, Petitioner has been denied even the opportunity to "have her day in court," as the United States Court for the District of Puerto Rico erroneously imposed an incorrect and artificially high burden at the summary judgment stage, despite Petitioner's presentation of genuine, disputed issues of facts sufficient to state serious civil rights violations and to preclude summary judgment. Federal courts should not be allowed cavalierly to dispose of domestic violence cases as mere state "domestic relations" or criminal matters to be handled by local authorities. Domestic violence victims, such as Petitioner and her children, must be assured fair and appropriate access to federal remedies where, as here, state officials openly violate constitutionally protected rights.

I

DOMESTIC VIOLENCE CRIME IS A NATIONAL EPIDEMIC THAT APPROPRIATELY REQUIRES ASSISTANCE OF TRADITIONAL CIVIL RIGHTS FEDERAL REMEDIES TO REDRESS IMPROPER STATE LAW ENFORCEMENT AND GENDER DISCRIMINATION

A. Domestic Violence Crimes Disproportionately Affect Women Nationwide

For years, efforts effectively to address family violence -- or violence between intimates -- has been particularly difficult to implement. Traditional police responses have often proved ineffective.

Violence between intimates includes murders, rapes, robberies and assaults committed by spouses, ex-spouses, boyfriends or girlfriends. *See* U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Selected Findings, Violence Between Intimates: Domestic Violence*, NCJ 149259, November 1994 at 1. Grim statistics of family crimes and homicides highlight the extent of the problem. From 1987 to 1991, intimates committed an annual average of 621,015 rapes, robberies or assaults representing more than 13% of these crimes. *Id.* at 2.

It is undisputed that women are at much greater risk of harm from these crimes. For example, female victims of homicide were significantly more likely to be killed by a husband, ex-husband, or boyfriend. *See* Ronet Bachman, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Violence Against Women: Domestic Violence*, NCJ-154348, August 1995 at 4. In one 1992 study, approximately 28% of female victims of homicide were killed by their husband, ex-husband or boyfriend. *Id.* Compared to males, females experience over 10 times as many incidents of violence by an intimate. *See* Selected Findings, *Violence Between Intimates: Domestic Violence*, *supra* at 2. Annually, women

experience over 572,000 violence victimizations committed by an intimate, compared to approximately 49,000 incidents committed against men. *Id.*

Effective enforcement remains an issue of much debate and controversy, particularly as a result of deeply ingrained stereotypes and misconceptions about violence between intimates. These include myths that domestic violence is a family matter in which government officials should not interfere; that victims provoke incidents of domestic violence; and that female victims can easily leave these relationships. *Developments in the Law - Legal Responses to Domestic Violence,* 106 Harv. L. Rev. 1499, 1502-1503 (1993). Many of these gender stereotypes discredit and devalue women's experiences and testimony, and often serve to trivialize domestic violence in the legal arena. Women often encounter resistance from law enforcement personnel who minimize the danger of attacks on women by their partners, as demonstrated by officials' refusal to arrest and prosecute abusers. Jenny Rivera, *Puerto Rico's Domestic Violence Prevention and Intervention Law and the U.S. Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 Colum. J. Gender & L. 80 (1995).

B. Federal and State Legislation Has Been Enacted to Address The National Domestic Violence Crisis

It is against this troubling backdrop that legislative reform and access to federal and state remedies have come to the forefront of national, state and local agendas. Legislators, the courts, law enforcement and family advocates are now working toward aggressive civil, criminal and community remedies and renewed enforcement.

Recent responses to domestic violence have been developed to protect victims and to eliminate negative social attitudes that continue to hurt female victims of domestic violence. New responses include legal reforms to civil and criminal laws, more aggressive arrest and prosecution policies, and new sentencing and treatment

programs. 106 Harv. L. Rev., *supra*, at 1530. States have strengthened stalking statutes and mandatory arrest policies; have enhanced police training procedures; and have instituted "no drop" prosecution policies. *Id.* at 1535 - 1542.

Puerto Rico's Domestic Violence Prevention and Intervention Law, P.R. Laws Ann. Tit. 8 § 601 (1991), commonly referred to as "Law 54," is considered a model statute because of its ambitious approach to aggressively curb domestic violence. The statute criminalizes a wide range of domestic violence and prescribes criminal and civil sanctions against the abuser. Rivera, *supra*, at 81. The Act also calls for preventive measures, such as increased education. *Id.* at 85. Although the statute has brought positive social and legal changes, its actual implementation has been hampered by controversy and criticism.

Review of the impact of Law 54 reveals that it has been the subject of affirmative resistance from law enforcement officials and politicians, particularly from those charged with overseeing its implementation. *Id.* at 83. By way of illustration, Law 54 calls for the Puerto Rico Commission on Women's Affairs (the "Commission") to oversee the Law's implementation by government officials and authorizes the Commission to direct implementation of key programs. *Id.* at 89. Various reports by the Commission to the Governor of Puerto Rico and the Legislature have underscored that law enforcement officials continue to resist the changes in legal and social culture that was contemplated by Law 54. Further, the Commission has concluded that patriarchal ideologies have affirmatively prevented successful criminalization of domestic violence. *Id.* at 91.

II

THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY SUMMARY JUDGMENT AND SUFFICIENCY OF PROOF REQUIREMENTS IN DOMESTIC VIOLENCE DISCRIMINATION CASES THAT IMPLICATE CONSTITUTIONALLY PROTECTED RIGHTS

A. Victims of Discrimination in Domestic Violence Cases Must Be Assured Access to Federal Courts

It is essential that the United States Supreme Court issue a writ of certiorari to ensure that victims of domestic violence are assured access to federal civil rights remedies where, as here, there is documented state-based resistance to local legislative mandates. It is similarly essential that crucial federal access and remedies not be summarily denied at the summary judgment phase on the basis of artificially high evidentiary burdens incorrectly imposed by the District Court and improvidently affirmed by the First Circuit Court of Appeals.

B. Petitioner Presents a Valid Claim Under 42 U.S.C. § 1983

The facts of this case present a sound basis for federal relief under § 1983 for the violation of Petitioner's equal protection and due process rights. This Court should grant certiorari to clarify the availability of § 1983 relief and to correct the erroneous standard used by the First Circuit in determining whether state action was actionable under 42 U.S.C. § 1983; whether improper gender discrimination motivated state actions; and whether summary judgment was properly granted.

Title 42 U.S.C. § 1983 provides a cause of action against "every person who, under color of any statute . . . of any State or Territory . . . subjects, or causes to be subjected any citizen . . . to the deprivation of any rights, privileges or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." 42 U.S.C. § 1983 (1997). "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). As recognized by this Court, "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

At the center of this case is the affirmative refusal and misapplication by state actors of Law 54 -- a law specifically enacted to address a longstanding failure to combat the widespread effects of domestic violence in Puerto Rico. Notwithstanding Law 54, police officials in Puerto Rico have affirmatively continued their resistance to proper enforcement of the law. The record shows that the First Circuit recognized the existence of evidence sufficient to create a triable issue of fact whether there existed a custom or policy of treating domestic abuse cases less seriously than other assault cases. The record also establishes a dearth of training of state and law officials in the proper implementation of Law 54. Pet. for Writ of Cert. at 6. *Soto v. Flores*, 103 F.3d 1056, 1066 (1st Cir. 1997). Additionally, the record contains evidence of disparate impact in that domestic violence victims are overwhelmingly women. Indeed, the record shows that police officials publicly denounced Law 54 as harmful and openly expressed discriminatory views of women. *Id.* This affirmative failure to enforce Law 54 has a demonstrable disparate impact on women and thus violates equal protection rights under the law.

But the uncontroverted facts show more than just a discriminatory failure to enforce the law. They show violations of due process as well. The Respondent police officials failed to protect Petitioner by failing to inform her of the availability of shelters and other forms of assistance and by failing to arrest her abusive spouse. Incredibly, the officers purposefully and affirmatively revealed to the

abuser Petitioner's police report -- even though they knew that he had threatened to kill Petitioner's family members if she reported his abuse to the police. *Soto*, 103 F.3d at 1060. The officers' actions affirmatively facilitated the abuser's threatened crime: he murdered Petitioner's children and then took his own life. *Id.* at 1061. Respondents' actions resulted in the loss of life and deprivation of constitutional rights.

The record is undisputed that Petitioner had approached the Respondent officers in their official capacity seeking aid and protection and trusting that they would keep her confidence -- as specifically mandated by Law 54. Instead, Respondents violated her confidence by notifying her abuser. Their affirmative and biased failure to abide by the prescriptions of Law 54 resulted in the loss of life under color of state law, depriving Ms. Soto and her children of their most fundamental statutory and federally protected constitutional rights.

In short, the record below establishes a failure to enforce and a deliberate violation of Law 54 by officials acting under color of state law -- all contrary to explicit legislative attempts to provide protective measures similar to those available to other crime victims.

C. Petitioner Was Denied Equal Protection Under the Law

The refusal to enforce Law 54 here resulted in the denial of equal protection that legislators enacting Law 54 sought to redress -- that is, to afford victims of domestic violence the same protection afforded to victims of other criminal behavior. The First Circuit, however, denied Petitioner's equal protection claim based on an erroneous standard of intent. *Id.* at 1067-68.

It is well settled that municipalities may be liable under the Equal Protection Clause of the Fourteenth Amendment in a federal action under § 1983 where police departments discriminate against victims of domestic violence by treating these crimes less seriously than non-domestic violence crimes. *See, Hynson v. City of Chester*, 864 F.2d 1026 (3d Cir. 1988); *Balistreri v. Pacifica Police Dep't*, 901

F.2d 696 (9th Cir. 1990); *Watson v. City of Kansas City*, 857 F.2d 690 (10th Cir. 1988).

The judgment of the First Circuit was incorrect and must therefore be reversed.

D. Petitioner Was Denied Due Process

Where, as here, officials operating under color of state law affirmatively act to create or to increase the danger to individual complainants, a cognizable due process claim exists. Indeed, this Court has acknowledged as much in *DeShaney v. Winnebago Dept. of Social Servs.*, 489 U.S. 189 (1989). There, this Court held that an affirmative act creating or increasing danger creates a cause of action under the Due Process Clause. *Id.*

Here, state officials acted in affirmative violation of the confidentiality provisions of Law 54, even while being fully aware of threats by Petitioner's husband to kill family members if she reported his abuse. Indeed, the court below acknowledged that police officials *created* the danger that resulted in the deaths of Petitioner's children, but refused to rule on Petitioner's due process claim. *Soto*, 103 F.3d at 1063-64.

To foreclose Petitioner's access to federal courts on the grounds set forth in the First Circuit's opinion is tantamount to cutting off § 1983 relief to domestic violence victims. Where, as here, there is clear evidence that a custom or policy of under-enforcement is motivated by gender bias, and where, as here, state officials created the danger that resulted in the loss of constitutional rights, § 1983 relief is available. Petitioner's procedural due process claims, however, were wholly ignored by the court below. As such, the District Court's dismissal and the First Circuit's affirmance of this case on summary judgment must be reversed and the case remanded with instructions to proceed on the due process claims.

III
THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE CONTOURS OF THE QUALIFIED IMMUNITY DOCTRINE

A. Respondents' Unconstitutional Behavior is Not Shielded by Qualified Immunity

The First Circuit disposed of the question based on an erroneous application of the qualified immunity doctrine. *Soto*, 103 F.3d at 1065. The First Circuit's application of the qualified immunity doctrine is erroneous and inconsistent with the long-stated goals of §1983. The qualified immunity doctrine balances our citizens' § 1983's interest in providing access to the federal courts for redress of state action that violates federally protected rights with the interest in efficient government operation. *Id.* at 1063-64.

As recognized by this Court: "When government officials abuse their offices, 'actions for damages may offer the only realistic avenue for vindication of constitutional guarantees.'" *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (*quoting Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982)). Whether a state official is liable for an unlawful official action turns on the "'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson*, 483 U.S. at 639 (*quoting Harlow*, 457 U.S. at 818-19). The qualified immunity doctrine is therefore limited to officials who act reasonably and in accordance with established law. By contrast, qualified immunity does not shield state actors from civil liability where, as here, their actions violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818.

B. Respondents' Unconstitutional Behavior Constituted State Created Danger Under Clearly Established Law

Qualified immunity is appropriate only where state officials act reasonably in light of established legal rules. *Anderson*, 483 U.S. at 639. The record plainly demonstrates that Respondents fell short of this standard. Pet. for Writ of Cert. at 16. Not only did Respondents fail to respond to Petitioner's complaint as required by Law 54, they affirmatively violated the law's confidentiality provisions while fully cognizant of her husband's threats of violence. They were, therefore, fully aware of the egregious nature of their actions.

It is not seriously disputed that Respondents were fully aware of the provisions of Law 54. The record shows that Respondents knew that Petitioner's husband had specifically threatened to kill her family members if she reported his abuse. Indeed, the officers involved were friends of the abuser. *Soto*, 103 F.3d at 1060. Undisputably, then, Respondents knew *first hand* that disclosure of Petitioner's complaint of abuse would result in violence. Under clearly established law at the time of their actions, Respondents reasonably should have known that their actions violated Law 54 and that § 1983 due process liability for violence and loss of life would be the result of their affirmative gender-biased actions. *See* Pet. for Writ of Cert. at 17.

The First Circuit determined that the state-created danger doctrine had not been clearly established because "in 1991 the First Circuit had not yet addressed the issue of state-created dangers." *Soto*, 103 F.3d at 1065.[2] This conclusion is inaccurate as a matter of law. As recognized by this Court, "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in

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2 See Petition for Writ of Certiorari at 18 - 20 (discussion of First Circuit cases addressing the state-created danger doctrine prior to 1991).

question has previously been held unlawful . . . but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson*, 483 U.S. at 640. To state that as of April 1991, existing law made clear that state action depriving Petitioner of her statutory rights under Law 54 would violate § 1983 is to have a penchant for stating the obvious.

Similarly, the First Circuit's assertion that qualified immunity can be defeated only if the basis for the cause of action has been specifically addressed in the court hearing the case is erroneous. This construction of "clearly established" law would foreclose § 1983 relief for all claims, except those addressed in the particular court hearing the case, and in where there is no factual disagreement. Such construction provides police with absolute immunity for even the most blatant violations of the law. Under this interpretation, police officers lose immunity only where a court hearing has previously determined the question at hand and where there is no disagreement as to the interpretation of the law. Simply stated, this is legally incorrect and contrary to this Court's pronouncement in *Anderson*. *See* 483 U.S. at 640.

CONCLUSION

This Court should grant certiorari to clarify the availability of § 1983 remedies where state acts discriminate against victims of domestic violence in violation of constitutionally protected rights. Petitioner Soto has stated a valid claim for § 1983 relief based on Respondents' affirmative violation of the confidentiality provisions of Law 54 on the basis of her gender -- a violation that resulted in the murder of Petitioner's children. To foreclose a § 1983 claim at the summary judgment stage will doom legislative efforts to address this deeply rooted problem and will encourage similar, egregious

violations of our civil rights, dealing a harmful blow to efforts to enforce domestic violence laws and ignoring the purpose and intent of § 1983.

Dated: New York, New York
July 10, 1997

Respectfully Submitted,

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